Wednesday,
20th June, 1883

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXII

Jan.-Dec., 1883

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OF

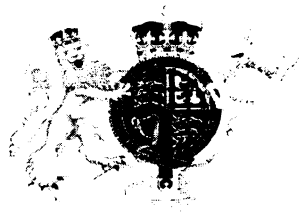
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1883

VOLUME XXII



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1884

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 20th June, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjāb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
Major the Hon'ble E. Baring, B.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. ILBERT moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces be taken into consideration. He said:—

"It appears to be my fate just at present to act as foster-father to Rent Bills. The calamity which called away Sir Steuart Bayley to Haidarábad in February last placed me in temporary charge of the Bengal Tenancy Bill; the accident which called away my friend Mr. Charles Crosthwaite to British Burma has now placed me in charge of the Central Provinces Tenancy Bill. I am anxious to define the precise relationship in which I stand to this measure, because it is important to bear in mind that it is essentially a local Bill, framed by officers of local experience with special reference to local circumstances and local requirements. It was originally drawn by Mr. Jones, now Chief Commissioner of the Central Provinces, under instructions which were given to him as long ago as 1873. It was introduced into the Council in 1880 by my friend Mr. Charles Grant, who, before he became Secretary in the Foreign Department, had a long connexion with the Central Provinces as District Officer

and Judicial Commissioner, acted at one time as Chief Commissioner and is well known as the Editor of the Central Provinces Gazetteer. After its introduction it was referred by the late Chief Commissioner for the consideration of a local committee, consisting of Messrs. Crosthwaite, Neill and Chisholm, who materially altered it, and in its altered form it was placed in the charge of Mr. Crosthwaite, then an Additional Member of this Council. Of the Bill in its present form, Mr. Crosthwaite has more claims than anyone else to be considered the author, and it substantially embodies the views and opinions of the late Chief Commissioner, and of the local committee appointed by him.

"Mr. Crosthwaite was kind enough to prepare for me, before he left for Burma, a careful note of what he had intended to say on the present occasion, and in the explanations which I now have to offer I shall draw freely on that note.

"The subject-matter of the Bill is difficult and complicated, and I am afraid that I shall not be able to make intelligible to the Council the modifications which we propose to make in the system of land-tenure in the Central Provinces without giving some account of the system which we found when we took over those provinces and of the system which we established after taking them over.

"The territories which now make up the Central Provinces were acquired by the British Government at different times and from different quarters, and, after they had passed under British rule, they remained for some time under different administrations. The Ságar and Narbada territories were ceded partly by the Peshwa in 1817 and partly by the Nágpur Rájá in 1818; the Nágpur Province was ceded as a whole in 1853, small portions of it having been under British rule since 1817; all these territories were combined under the name of the Central Provinces, and placed under a Chief Commissioner in 1861; Sambalpur was added to them in 1862, and Nimár in 1864. The Ságar and Narbada territories had been for some time attached to the North-Western Provinces, and Sambalpur and Nimár had been directly or indirectly under British administration for many years before they were made part of the Central Provinces.

"It might be expected that the land and revenue systems of territories with such different histories and antecedents would present great and radical divergencies. As a matter of fact, however, this is not the case. 'The study of the subject to which I have in the course of my present work been compelled,' says the present Chief Commissioner in a note which he wrote on this Bill in 1880, 'has convinced me that, in order to a right understanding of the tenures of the different parts of the Province, we must begin by recognizing their original

similarity. Diversity, at the present day, there no doubt is, but it is a diversity which has arisen, not from original and inherent difference, but from the fact that in quite recent times—and in the Central Provinces everything is youthful and recent—divers influences have impressed themselves upon systems which were in all essential respects the same. The position which I would lay down is this, that, speaking broadly, identical revenue-systems prevailed in all the districts of which these Provinces are composed at the time when they severally came under our rule or influence, and that all the differences which they now present are due, first, to the diverse trainings and prepossessions of the officers through whom we administered them; secondly, to difference in the revenue-systems which those officers looked to as models; and, thirdly, to the length of time during which the two preceding conditions have been operating; in short, I would affirm *that such differences as exist are of our own creation.*'

"The explanation of this substantial identity underlying superficial differences is simple. The Mahratta harrow had passed over the whole of these territories and had gone a long way towards reducing them, for revenue-purposes, to one dead-level of uniformity.

"What then was the Mahratta revenue-system? Its fundamental principles may, according to Mr. Jones, be summed up in the following four propositions:—

"I.—Settlements are annual or for very short terms.

"II.—Cultivators pay revenue, not rent, and competition rents are therefore unknown.

"III.—Headmen of villages, or the persons or bodies whom we should regard as possessing rights approximating to proprietary rights, are, in respect of raiyats' lands, office-holders and managers.

"IV.—No rights are allowed to grow up by prescription or otherwise, the effect of which would be to limit the power of the Government to raise a maximum revenue from the land.

"The essence of the system appears to have consisted in constant revisions of the revenue assessments, with the view of maintaining them at the highest possible level, and thus preventing the growth of middlemen with rights and interests intermediate between the Government and the cultivator.

"Property in land was not recognized, but every cultivator was entitled to hold his land as long as he paid the share of the Government revenue apportioned to it. The Central Government fixed annually the sum which each pargana or revenue sub-division was to pay. The apportionment of the revenue

on the several villages was made by the pargana officers in consultation with the headmen or patéls of villages, who assembled at the pargana head-quarters for this purpose. When the assessment of each village had been settled, the patéls returned each to his own village, and the share to be paid by each cultivator was made known to him.

"The manner in which the detailed assessments were made is interesting and curious, and arose, no doubt, out of the habit of the Mahratta Government of not fixing its revenue until late on in the agricultural year. The usual practice of the Nágpur Government was to announce its assessments about the month of August, when the character of the rains and the probable quality of the harvest were known. Here, however, as elsewhere in India, the agricultural year begins about June, and that is the time when the annual settlements between the Government agent and the raiyats would generally be made. But, as the amount which each raiyat would have to pay depended entirely on the amount of the Government assessment, which in June was an unknown quantity, an ingenious method of meeting the difficulty was devised. The patél and the cultivators, acting as a body bound together by the tie of one common responsibility for the payment of the revenue assessed on their village, divided the cultivated lands into two classes. In one class they ranked the very inferior soils, which could not bear more than a very small rent; and these they assessed at a fixed money rent with respect to the quality of the soil and the ruling prices of produce. In the second class they placed the better soils which after paying the cost of cultivation, left a considerable margin of profit, sufficient to bear the possible fluctuations in the Government demand. Fields of this class were not assessed at any fixed rate, but the joint liability for the Government revenue on the whole village being taken, say, at a hundred shares, each of these fields was rated as equal to so many shares of the whole. Thus, each individual cultivator knew that he would have to pay a fixed unalterable sum for his bad lands, and that on account of his good lands he was liable to pay a certain fraction of the Government revenue, whatever that might be. This classification and valuation of fields was made annually, with a view to meeting the changes in the condition not only of the fields but of the raiyats themselves. Impartiality in the distribution of the revenue was secured by the rule of joint responsibility. If the revenue imposed on any individual could not be recovered from him, the deficiency was not remitted, but was made good by the imposition of an additional rate on all the others. Thus, there was given not only a great incitement to fair and just dealing, but a considerable stimulus to mutual help and co-operation.

"This system is described by Sir R. Jenkins, who was Resident at Nágpur in 1827, as existing in his time, and the sketch of it which I have given,

and which is taken mainly from his well-known report on the territories of Nágpur, appears to show clearly that under the old constitution of the country there was no such thing as a landlord or tenant in our sense of the word, that rent was unknown, and that such things as revenue-rates or rent-rates had no existence at all.

"However, even during the period of Native rule, influences were at work which tended to subvert the ancient order of things. During the decline of the Bhonsla power, the State imposed revenues higher than the people could easily pay, and resorted to the abuse of farming the villages to the patéls or village-headmen, and leaving them to collect what they could from the people. This abuse tended to place the patél in a position of greater supremacy, and to give him powers which were capable of developing into proprietary rights. Here, as elsewhere, the transition from a collector of revenue to a farmer of revenue, and from a farmer of revenue to a receiver of rents, was easy and natural.

"This, then, was, roughly speaking, the state of things which we found in existence when we took over the several territories which make up the Central Provinces. What modifications did we introduce into it? To answer this question, I shall quote again from Mr. Jones' note:—

'The history of our dealings with the different parts of the Province as we successively acquired them is, in almost every case, the same. We first made one or more severe settlements for short terms, then tried experiments in farming, interfering a good deal in a patriarchal way between patèls and cultivators, sometimes resorting to khám management, and finally made up our minds to long settlements at reduced jamas. These long settlements—I do not here refer to their effect on the prosperity of the agricultural classes—were the great turning-point in the revenue-history of the Province, and to them every change by which the Native revenue-system was modified, and at last superseded, may be traced.

'The chief immediate effect of the long settlements was to sever the mutual interdependence of the amount of cultivator's payments and the Government demand. The patèl became the málguzár, and was no longer restricted, either by theory or in practice, from demanding rents disproportionate to the jama which he had to pay out of them. Cultivators begain to pay rent instead of revenue, and the question arose whether málguzárs could not enhance during the currency of a settlement, irrespective of increase of cultivation; in other words, whether Government had not delegated to them the right, which it would (had the long settlement not been made) have itself exercised, of from time to time raising its revenue by enhancing the payments of cultivators. In the case of the earlier settlements, there can be no doubt that the intention of the officers who made them was that the rents paid at the time of settlement should not be enhanced during the settlement; but in the case of the later settlements the point is not so clear, except where, for instance, in Nimár, the training and prepossessions of local officers led to an unhesitating acceptance of the alternative most favourable to the cultivator. This much, however, is quite clear, that, whether málguzárs were regarded by the officers of the day as having a right to raise rent during the currency of a

settlement or not, they did not themselves feel confident of having this right, and never exercised it. They could not all at once shake themselves free of the idea that cultivators could not be asked to pay more than the Government revenue. The position, therefore, at the close of the period preceding the regular settlement was this, that cultivators paid rent and that there was no restriction in the amount of rent which new cultivators might pay, but that rent fixed at the commencement of a settlement remained in practice unaltered to its close.

'The acquisition by málguzárs of the right to demand rent as distinguished from revenue, and of the theoretical power of raising rent during the currency of a settlement, brought in its train other fundamental changes by which the other roots of the Native revenue-system were torn up, for,—

'first, málguzárs, having always been accustomed to eject in the interest of the Government tenants who would not pay the quotum of revenue demanded from them, began now, by an easy transition, to think themselves entitled to eject in their own interest tenants who refused to pay the *rent* demanded of them; and,

'secondly, the resulting tendency to an increased exercise of the power of ejectment being strongly opposed by the sentiment of the people, a limitation was placed upon it by the introduction of a novel distinction between old and new cultivators, and the recognition of a specific right of occupancy in the latter.

'The change from the Native system of revenue administration was thus completed. Not one of the principles enumerated in paragragh 4' (these are the four principles which I have already mentioned) 'remained intact.' Short annual settlements had given way to settlements for long terms; cultivators' payments had become rents; the power of fixing them having been resigned by the State in favour of málguzárs; the latter had acquired rights which made their position approximate more to that of proprietors than of mere office-holders; and, lastly, one class of tenants, the occupancy-class, had been allowed to participate in the full rent of their lands, or, in other words, to acquire rights which conflicted with the right of the State to realize a maximum revenue from the land.

'But although the Native revenue-system had thus been uprooted in theory, it had not, at the time when regular settlements began, lost its hold on the people, even in those parts of the province where it had been longest exposed to hostile influences. The tenant would not believe that the State had handed him over to the málguzár; would not understand that his rent was to be disproportionate to the Government-demand; wanted it lowered when the Government-demand was lowered, and looked upon the settlement *parchas* as leases from Government. His views on the subject of ejectment were not announced with great distinctness, because, at the period I am speaking of, he did not understand the new motive which the málguzár had for ejecting him. Ejectments with the object of increasing a rent-roll had not then been much resorted to, and District-officers were apt to use their influence in protecting tenants when necessary.'

"Under these circumstances, and at a time when most of the current settlements for the Central Provinces were in course of being made, Act X of 1859 was extended to those provinces. The exact date of its extension is the 2nd March, 1864. This famous Act, with the main provisions of which the members of this Council have only too good reason to be acquainted, was, as we are all

aware, framed with a view to the special circumstances of Bengal, and it was applied to the Central Provinces, not because it was held to be suited to their circumstances and conditions, but because a law of some kind was wanted, more to regulate matters of procedure than to settle questions of right, and Act X of 1859 was the only law ready to hand. It was, in fact, avowedly introduced as a mere temporary makeshift, and it was never intended to remain in permanent operation.

'First of all,'

write Mr. Jones in the note from which I have already quoted at such length, 'I would correct an impression, which I believe is prevalent among Revenue-officers in the Central Provinces, that, when Act X was introduced, the applicability of those parts of it which contain substantive law was considered, and that the relations between landlord and tenant which the Act lays down or assumes were then, after discussion, held to be suitable to the circumstances of the Province. Nothing can be further from the truth. In the correspondence which preceded the introduction of the Act, those parts of it which contain substantive law are only casually referred to, and attention was directed, almost exclusively, to the sections which confer jurisdiction and supply a procedure. The fact is, that the substantive provisions of the Act, coinciding, as they did, with the views which had gained acceptance among the officers by whom the greater part of the Province was administered before its formation, with theories held in the North-Western Provinces, and with the English ideas then prevalent, were not deemed to require discussion at all, and the Act was introduced with the sole object of rounding off the corners of the system of procedure previously applicable to civil and revenue suits. In the Ságar and Narbada territories there had been a special code of procedure for revenue-suits, and in the Nágpur Province, Act X suits had been dealt with as summary suits under Regulation VIII of 1831. Act X simply abolished these procedures, and no one has any right to suppose that the assumptions regarding the relations of landlords and tenants which underlie its provisions received any new support or confirmation at the time, and by the fact, of its introduction.'

"The provisional character of the law thus introduced, and the necessity of modifying it for the purpose of making it even temporarily applicable to the circumstances to which it was applied, are fully recognized in the circular instructions which were issued to Settlement-officers shortly after its introduction. The most important of these circulars is one which was issued on the 27th of March, 1865, and which is, I believe, well known among Revenue-officers as Circular G. I refer to it because it appears to be the basis of the distinction, which is recognized and confirmed by the Bill, between absolute occupancy-tenants and other occupancy-tenants who have up to this time been, for reasons which I shall explain, commonly known as conditional occupancy-tenants.

"The first class, that of absolute occupancy-tenants, was created at the time of settlement, and comprises, as I understand, all the old substantial resident cultivators who then existed. They were termed absolute occupancy-

tenants because their rights were recognized on grounds other than those mentioned in Act X, and were not conditional on the retention of that Act as part of the law of the Provinces. The tenants entered in this class were men whose rights in the soil were admitted without reservation by all parties. Into this class were swept all those who had long connection with the village, who had dug wells, planted groves, or otherwise improved their lands. The form in which their rights should be declared was considered by the Government in 1868, and it was then decided—

(*a*) that their rents should be fixed for the term of settlement, now and hereafter;

(*b*) that their tenure should descend as land;

(*c*) that they might sub-let or mortgage, and might sell subject to a right of pre-emption at five years' rent or the payment of one year's rent as a fine to the málguzár.

"These conditions were accordingly embodied in the village-administration papers, and were in this manner made binding as between the málguzár and the tenant.

"The other class of occupancy-tenants are those who owe their rights to the twelve years' rule embodied in Act X of 1859. With respect to this class, the officers of the Settlement Department were instructed by Circular G 'to make it clear to all parties that any record of occupancy-right based solely upon possession for 12 years is made subject to any future alteration of the law.' It is in consequence of this saving clause that tenants belonging to this class are often spoken of as conditional occupancy-tenants. They hold from father to son, and are, under the law as it stands, liable to enhancement of rent only on the grounds specified in section 17 of Act X of 1859, that is to say, on the ground either that the rents are below the rates prevailing in the neighbourhood; that there has been an increase in the value of the produce or of the productive power of the holding; or that there has been an increase in the area of the holding.

"The circumstances of Chánda, Nimár and Sambalpur were found to require special and exceptional treatment, and in those three districts the settlement which was effected was, in point of fact, a raiyatwárí settlement. The rights of tenants in Chánda and Nimár are at present determined under a resolution of the Government of India, dated the 21st of June, 1865. Under this resolution, all tenants who held land (other than sír land) on that date, and all tenants who might take up land after that date without a written lease, became occu-

pancy-tenants, and were declared to hold on a tenure which was described as "the customary tenure," and the main incidents of which are as follows :—

"i.—It is heritable, both lineally and collaterally.

"ii.—The right is transferable to a co-sharer by inheritance or to an heir-expectant.

"iii.—If the rent was fixed by a Settlement-officer before the date of the resolution, it is to remain fixed during the term of settlement. Otherwise the landlord can apply *once*, and once only, during the term of settlement to enhance the rent up to the maximum rate recorded for the class of soil held by the tenant.

"iv.—The tenant has the right to improve.

"v.—The power of sub-letting is restricted.

"All the land in Nimár and, practically, all the land in Chánda appears from recent returns to be held by tenants who are described either as absolute or as conditional occupancy-tenants.

"In the case of Sambalpur, the Government of India intervened before proprietary rights were conferred or recognized as existing in any person between the State and the cultivator, and decided that the village headman or *gaontia* was to be the proprietor only of his *sír* or *bhógra* land, and was to have the right of collecting the revenue and managing the village; that the persons (if any) holding sír land under him were to be his tenants-at-will; that during the term of settlement he was to have the privilege of creating raiyats on waste land, and that the revenue thence derived was to be his during that term, but that he was not to charge them more than the village-rates as fixed at the time of settlement. All other raiyats are Government raiyats, paying revenue and not rent, and not liable to eviction except for non-payment of revenue.

"I have dwelt on these particulars, at the risk of being tedious, because they explain the special references in the Bill to Chánda, Nimár and Sambalpur, and show that what might otherwise appear to be arbitrary differences of treatment are due to the desire to make no greater alteration than is necessary in the existing state of things.

"The broad result is that, subject to the special peculiarities which I have noticed, the tenantry of the Central Provinces may at present be divided into three classes, namely :—

"i.—Absolute occupancy-tenants.

"ii.—Occupancy or conditional occupancy-tenants.

"iii.—Ordinary tenants not protected by any special provision of the law or entry on the village-papers.

"I understand that about 37 per cent. of the total number of tenants have occupancy-rights, and it appears from some returns which have been recently laid before the Select Committee that about 7-12ths of the total acreage under cultivation is held either by absolute or by conditional occupancy-tenants.*

"These, then, are the circumstances with which we have to deal. We found a body of cultivators paying revenue to the State through their village-headmen. Under, and for the purpose of, the revenue-system which we introduced, we converted the headmen into proprietors or landlords, the cultivators into their tenants, and the payments made by the cultivators into rent. We took a man who had no motive but to make a fair apportionment of the State demand and who, even after he became a contractor for, or a farmer of, that demand, did not conceive that he could reap a legitimate profit by enhancing the rents of the raiyat; we took this man and made him proprietor of the soil. We made the Government raiyats his tenants, and we gave him a legal power to raise his rents and at the same time a motive for exercising that power. Instead of using our utmost endeavours to squeeze out of him every penny which we could succeed in extracting by fair means or foul from the cultivator of the soil, we reduced his revenue-assessments to such a level as left him a substantial margin of profit; and we secured him in the enjoyment of this margin for a long term of years. Thus, whereas, in the earliar settlements of Hoshangábád we took 85 per cent. from the málguzár, leaving him only 15 per cent. for expenses of collection, we reduced the amount thus taken to 66 per cent. in 1838, when a twenty years' settlement was made, and we further reduced it to 50 per cent. in 1864, which was the date of the last settlement. We saw, indeed, that the changes which we had introduced would tend to benefit the new proprietary class unduly at the expense of the cultivators, and we endeavoured to give the latter some kind of protection, partly by means of a law which, having been framed for a widely different set of conditions, was applied as a temporary makeshift to the Central Provinces, but mainly by means of stipulations and declarations inserted in the settlement-records. But we always recognized the imperfect, provisional and transitory nature of the arrangements thus made.

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* See Paper No. 30 to the Bill.

	Acres.
Area of absolute occupancy-tenants' holdings	3,232,173
Do. conditional do. do. do.	3,861,304
Total area held by absolute or conditional occupancy-tenants	7,093,477
Area held by other tenants	5,336,014
Total	12,429,491

"Under these circumstances, there will be little dispute either as to the necessity for legislation, or as to the main principles on which legislation should proceed.

"The necessity for legislation was recognized as long ago as 1873, when Mr. Jones, now Chief Commissioner, was entrusted with the duty of framing a suitable law for regulating the relation of landlord and tenant in the Central Provinces.

"And as to the principles of legislation, it is clear that we must not allow what was intended to be a boon to the immediate revenue-payers to be a curse to those from whom the revenue is ultimately derived. In giving the proprietary right to one class, the Government neither intended nor had a right to injure the status of another and much larger class; and if it is found that the change which we have introduced has injured that status, we are not only justified in devising, but bound to devise, measures for remedying that evil. Our object then should be to protect the tenant, so far as it is practicable to protect him, by legislation, and the only question is what form that protection should take. For the purpose of explaining the proposals made by the Bill with this object, I will remind you of the several classes of tenants with whom we have to deal, and will show how the Bill proposes to deal with each.

"There are, as I have said, in the existing state of things, three main classes of tenants—absolute occupancy-tenants, conditional occupancy-tenants, and a third class who are usually described as tenants-at-will, and who are in fact given no special protection by the law. The Bill recognizes these three classes, and adds to them a fourth, that of sub-tenants, whom, however, it treats very curtly.

"The absolute occupancy-tenant is left by the Bill very much as he stands under the existing record-of-rights. His rent is fixed for the term of settlement, and cannot be altered during that time, except on the ground of an improvement made by the landlord or of a material increase, diminution or deterioration of his holding. He cannot be ejected. His rights are heritable, and are transferable subject to certain restrictions which I will mention. In the first draft of the Bill it was proposed to deprive absolute occupancy-tenants of the power of transfer, on the ground that, by leading them into debt, it was proving their destruction. There is, no doubt, much to be said for this view, but I think that the more powerful arguments are against it. The rights conferred on these tenants at settlement were made part and parcel of the settlement-contract in order to remove them, if possible, from the field of legislation. Their holdings have in not a few instances changed hands, and the purchasers have acted on the understanding that they had bought a marketable commodity.

It may be that the improvident have lost their lands, but those who remain are presumably the more prudent and thrifty of their class, and are not likely to appreciate an interference which will undoubtedly lessen the value of their property. Moreover, I am myself somewhat sceptical about the possibility of preventing the transfer of rights of this kind when they once have been placed on a secure legal basis.

"Accordingly, the Bill allows the absolute occupancy-tenant to transfer his rights, but his power of transfer is not altogether unfettered.

"Under the settlement-rules, the tenant of this class had an unlimited power of mortgage; but, if he sold his tenure, the landlord had a right either to claim a fine or to buy the tenure at a fixed price. We found it very difficult to express the exact conditions laid down by the settlement; and we have altered them in two directions. On the one hand, in the interest of the landlord, we have treated a mortgage above a certain value as equivalent to a sale; on the other, in the interest of the tenants, we have abolished the fixed price at which the landlord might under the settlement-rules claim to buy, and have left the price to be equitably determined in each case by a Revenue-officer.

"Some objections have been raised on behalf of the landlords to this change. But I think a consideration of the section (38) will show that what we have done is, on the whole, the fairest way of dealing with the matter. As the right of pre-emption has hitherto stood, it would always be evaded by a mortgage. And as the price fixed at settlement—five times the annual rent—was left farther and farther behind the real value of the land, the landlord's right would have been generally defeated in this way.

"Next come the twelve years' men, those who have acquired occupancy-rights under the operation of the twelve years' rule in Act X, but whose rights were, under Circular G, expressly made subject to any alteration in the law. The persons belonging to this class are in the Bill called simply occupancy-tenants, and the class is so defined as to include all persons who have, up to the present date, acquired the rights to which I have referred.

"With respect to this class it was generally admitted that their rents ought to be fixed by superior authority and not left to competition; and the most important questions with respect to them were two—for what period should their rents be fixed, and by what standard?

"First, as to the period for which the rents should be fixed.

"In answering this question regard must be had to the special circumstances of the Central Provinces. There are parts of the country, such as the North-

Western Provinces, in which the weight of argument appears to be strongly in favour of fixing the rents of occupancy-tenants for the full term of settlement; but the circumstances of those regions differ widely from the circumstances of the Central Provinces. In the North-Western Provinces the country has long been opened up; rents have attained a high general level; population is dense; competition for land is keen; the revenue is probably as high in most districts as it ought to be.

"To the Central Provinces none of these statements apply. The country is in its infancy; population is sparse; rents are low; the effects of introducing roads and railways are only just beginning to be felt. If in a country such as this rents were fixed for the period of settlement, the result would be that there would be a very large beneficial interest given to the cultivator, sub-letting would be encouraged, and, when the time comes for revising the assessment, great hardship would probably be caused to the tenant by the necessity of ordering a sudden and serious increase in his rent.

"This being so, the late Chief Commissioner and the local Committee to whom he referred the Bill for consideration came to the conclusion—a conclusion which the Select Committee have adopted—that it would be wise to provide for some enhancement of rent during the term of settlement, and the Bill has made such provision accordingly, but under conditions which guard against the rent being increased (except for landlord's improvements or increase in area) more than once in ten years.

"Next, as to the standard by which these rents should be fixed. The Bill as first introduced provided for the determination of these rents primarily on the basis of the settlement-rates and other customary rates paid by tenants of the same class. But it was found that, mainly in consequence of the non-existence of anything that could properly be called customary rates, there would be a difficulty in applying this standard; and accordingly the Bill in its present form simply directs (by section 42) the Settlement-officer to fix the rent of the holding of every occupancy-tenant at each settlement of the area in which the holding is comprised, and empowers the Chief Commissioner (section 82) to make rules for the officer's guidance in fixing rents. Our desire is that the rents should be fixed at such a rate as will leave the tenant a reasonable margin of profit without trenching too widely on the share either of his immediate landlord or of the State; but we doubt whether this principle can be satisfactorily embodied in any hard-and-fast legislative enactment, and accordingly we have thought it safer to leave the point to be dealt with by executive instructions.

"I have said that provision is made for raising the rent of these tenants during the term of settlement. It may be so raised by order of a Revenue-officer

on the application of the landlord; and the Bill as submitted to the Council last December directed that such an order might be made if the rent of the occupancy-tenant was less than three-fourths of the rate usually paid by ordinary (that is to say, non-occupancy) tenants of holdings situate in the same or adjoining tahsils for lands of similar quality with like advantages, and that, if the order was made, the rents were to be raised to three-fourths of those rates. This direction, has, however, been objected to from two points of view,—first, as tending to raise the rent of occupancy-tenants to an excessive rate, and, secondly, as tending to unduly hamper officers in fixing rents at the term of settlement. I think that sufficient answers may be found to both of these objections; but on the other hand, it was not easy to see why, if the discretion of officers in fixing rent at settlement was left uncontrolled by any hard-and-fast legislative direction, it should not be left to the same extent uncontrolled during the term of settlement. We have accordingly omitted from the present draft of section 46 any reference to the standard supplied by the rents of ordinary tenants, and have left such directions as may be required for the guidance of officers in acting under the section to be supplied by rules made under section 82.

"With respect to the devolution of an occupancy-tenant's rights on death we have not modified the original proposals of the Bill. His rights are to descend as if they were land, except that they are not to go to a collateral relative unless he was at the tenant's death a co-sharer in the holding. This is the rule of inheritance which under the North Western Provinces Rent Act applies to tenants holding at fixed rates. An exception has been made in the case of the three districts of Chánda, Nimár and Sambalpur. In these districts, where, as I have said, the settlement is virtually raiyatwárí, the rights of an occupancy-tenant are expressly declared by the settlement-record to be heritable collaterally as well as lineally; and accordingly we have left them so. But in the other districts, where no fixed rule of inheritance appears to have been established by usage or prescribed by authority, we have thought it desirable, whilst recognizing the heritable character of the right, not to saddle it more than necessary with the complicated rules of Hindu succession.

"We have restricted the power of an occupancy-tenant to transfer his holding to cases where the transfer is made to a person who would be an heir, or is a co-sharer, or is made with the landlord's consent; and we have provided that his right shall not be sold in execution of a decree. And, after various attempts to deal with the difficult question of sub-letting, we have come to the conclusion that it is impacticable to do more than impose on sub-letting the same restrictions as are imposed on transfer in the ordinary sense of the word; that is to say, a tenant may not sub-let without his landlord's consent, unless his sub-tenant is a co-sharer or an expectant heir.

"I now come to the most difficult class of all,—the class who are described in the Bill as ordinary tenants. The position of this class under the existing law is this. They have no rights conferred on them by the law or by the terms of the settlement-record, except that, if they remain long enough on their land, they rise, under the operation of the twelve years' rule in Act X, to the status of occupany-tenants.

"The Bill as first introduced maintained the twelve years' rule and allowed the growth of occupancy-rights. Recognising, however, the tendency of that rule to induce landlords to shift and harass their tenants, the authors of the Bill provided a machinery to protect the tenant during the term of growth of his rights. This arrangement, which I need not explain in detail, introduced in point of fact a new class of tenant, likewise deriving his rights from lapse of time or prescription and liable to lose them under certain conditions. These proposals met with much criticism and opposition from many sides, and the late Chief Commissioner and the local committee, after giving the proposals long and careful consideration, came to the conclusion that they ought to be abandoned.

"This being so, the proverbial three courses appeared to be open to us. We might either leave things alone, maintaining the existing twelve years' rule, and allowing the present race of tenants-at-will to struggle by means of it into the position of occupancy-tenants or, we might give a right of occupancy to all cultivators of every class, or, thirdly, we might do away with the twelve-years' rule and devise some other means for protecting all tenants who have not acquired occupancy-rights.

"Before explaining the course which the local committee ultimately recommended, and which the Select Committee decided to adopt, let me remind you briefly of the facts with which we have to deal. The most important are these:—

"(1) The twelve years' rule was never introduced into the Central Provinces otherwise than provisionally and tentatively; it has never become in these Provinces part of the established law of the land.

"Up to a recent time in all parts of the Provinces, and up to the present time in many, perhaps most, parts of them, the competition has been for tenants, not for land, and landlords have been indifferent to the growth of occupancy-rights.

"This state of things is now altering, and appears likely to alter with increasing rapidity. The number of notices to quit issued in the districts of the Narbada Valley, which is the part of the Provinces

most affected by recent improvements of communication, has become very significant, and manifests a growing inclination on the part of landlords to prevent the growth of occupany-rights and to make enhancements.

"Now, the objections to the twelve years' rule are obvious. It gives the tenant during the currency of the twelve years the most insecure of all titles—a title by sufferance: it supplies the landlord with a powerful additional motive to evict. Where it has been deliberately and permanently engrafted into the law of the land, and has for a considerable time constituted part of that law, the balance of argument may be in favour of retaining it, with such modifications and supplementary provisions as may be necessary for preventing landlords from reducing it to a nullity. But, as I have shown, in the Central Provinces this is not the case. The rule was introduced there merely as a stop-gap, not as a permanent settlement of the question. It may, indeed, be said that it has nevertheless worked well so far, that the growth of rights under it is steady, and that in most parts of the provinces it has not produced friction between landlord and tenant or led to the increase of evictions. There is much truth in this, but, on the other hand, we cannot shut our eyes to the economic changes which are going on, and which must inevitably at no distant future produce the effects which they have produced in other Provinces. Prevention is better than cure, and the very fact that the present relations between landlord and tenant are comparatively harmonious supplies a powerful argument in favour of intervening now to devise, if we possibly can, some measures for the protection of the tenant which may be free from the defect shown by experience to be inherent in the twelve-years' rule.

"On the whole, then, having regard to the obvious imperfections of the twelve-years' rule, and to its recent and provisional introduction, we decided to abandon it, except so far as rights had already grown up under it, and to stop the further growth of occupany-rights by lapse of time.

"Should we then fix the rents of all classes of tenants for a term, and thus give them all occupancy-rights? This is evidently the most thorough-going remedy against rack-renting, but it involves official interference of a very strenuous and prolonged character, and the local committee were of opinion that, other considerations apart, the time had not come for imposing so heavy a burden on an already overtasked administration. Whatever may be the case in the older Provinces, uniform rates of rent are not, I understand, to be found in the Central Provinces;* and, in the absence of such guides, the task of fixing the

* "The most rudimentary idea of rent-rates does not exist here, and the greatest anomalies in practice are found. Nothing could be more common than to find two contiguous fields allowed by the holders to be exactly equal in quality and productiveness, yet one paying double the rate of rent paid by the other."—(Hoshangabad Settlement Report, p. 201.)

rent of every tenant for a term of years would be one of extreme magnitude. It would practically amount to a regular settlement. When we consider that the Province passed through the ordeal of settlement barely 15 years ago, that a settlement is one of the most costly luxuries in which the State can indulge, and that no increase of revenue can be looked for, we shall readily agree with the local committee that the universal ascertainment and settling of rents is a measure not at present desirable.

"There remained the adoption of some new method of protection, and the method which the local committee eventually made up their mind to recommend was the method of compensation against disturbance. This is the proposal which is embodied in the Bill. The tenant's rent may be enhanced by agreement. If he agrees to the enhancement demanded by the landlord, no further enhancement may be made for seven years. In other words, he gets a seven years' lease at the enhanced rent. If he refuses to agree to the enhancement, the landlord may evict him, but must pay him as compensation a multiple of the sum demanded as enhancement. After much discussion we have fixed the multiple at seven times the yearly increase of rent demanded. The tenant cannot be ejected except for non-payment of rent, or on certain other grounds which are specified in the Bill.

"The great argument in favour of this proposal is that it compels the parties by the pressure of self-interest to decide what is a fair rent. If the tenant refuses a fair demand for an increase, he will be liable to lose his holding for an insufficient recompense. If the landlord makes an unfair demand, he may have to buy out the tenant at a cost which he can never recover. The scheme may indeed be objected to on the ground that, although based on a precedent derived from Ireland, there is no precedent for it in the Indian Statute-book, and that it constitutes a new departure in Indian legislation. The same objection might have been urged—was, if I am not mistaken, urged—against the principle of compensation for improvements which has, now for many years, been embodied in the law of landlord and tenant for the Punjáb, Oudh and the North-Western Provinces, and will, I hope, before long form part of the law of landlord and tenant for Bengal. But those who denounce this and similar proposals as new-fangled and exotic should remember that in India settled laws and, to a great extent, property in land are exotics, and that in the Central Provinces they are exotics of very recent importation. We have, by the measures which we have introduced, created entirely new rights and entirely new relations. The general effect of these measures is, we believe, beneficial to the country, but they have produced, or are likely to produce, certain results which we did not intend, which are likely to be pernicious, and, against which we are bound to guard. The rights themselves being novel

it is not a matter for surprise that the safeguards which are necessary to prevent an abuse of those rights should be novel also; and in the Central Provinces more than in most parts of the country we have something resembling a *tabula rasa* to work upon. There are comparatively few traces of existing customary rights on which to found our law. The whole position is novel, and demands novel treatment.

"The mere novelty, then, of the proposals constitutes no substantial objection to their adoption. Far more serious are the arguments that they will prove in practice an insufficient protection against rack-renting. We have not overlooked these arguments, and we admit their force in the case of countries where there is a keen struggle for land, and where population is redundant and has no outlet. But it seems a fair reply to say that at the present time these conditions do not exist in the Central Provinces. Compensation for disturbance constitutes a check on capricious eviction. Whether that check will be sufficient, whether it is likely to be surmounted or got round, is a question which turns mainly on the habits and nature of landlord and tenant, and on the amount of demand for land. These are points about which I am not competent to give an opinion; and all that I can say is that, in the belief of those who are most competent from local experience to form a judgment on these points, the proposals embodied in the Bill will work well, and will give an effectual protection to the cultivator for some time to come. If the Bill does this, if for some considerable time to come it is found sufficient to protect the tenant against capricious eviction, and to secure him in possession of his holding as long as he pays a fair rent, it will have done all that we can reasonably hope to accomplish.

"Except in respect of the procedure for enhancement of rent, there is practically no difference between the position of the occupancy-tenant and that of the so-called ordinary tenant under the Bill. The rights of the ordinary tenant are heritable and transferable, under the same restrictions as those which apply to the occupancy-tenant; he is protected from ejectment except in execution of a decree which can only be obtained on specified grounds, and he cannot contract himself out of this protection.

"Under these circumstances, it is doubtful whether he would gain much by being made in name an occupancy-tenant. However, the Bill provides him with a means of acquiring that status, if he desires to do so. It gives him the right of purchasing the status of occupany-tenant by the payment of a fixed sum equal to 2½ years' rent. This proposal is in accordance with the views of the Famine Commissioners, and may, I think, be fairly regarded as a proper and necessary consequence of the abolition of the twelve-years' rule. It will enable the prudent and thrifty to raise their status.

"This provision has indeed been considered by the landlords as an injury and infringement of their rights. But we fail to see that it can do any substantial injury to that class. We have provided that, before a tenant can claim to complete the purchase of an occupancy-right, his rent may be raised to the full average ordinary standard. Thus, a landlord will get Rs. 250 for every Rs. 100 of rent, and that sum, if invested, will suffice to protect him from the small future loss which the tenant's right of holding at a beneficial rate may hereafter cause him.

"The provisions with respect to transfer and sub-letting by an ordinary tenant are, as I have said, substantially the same as in the case of an occupancy-tenant.

"The mention of sub-letting naturally leads me to the fourth class of tenants dealt with by the Bill—the class of sub-tenants. The chapter on sub-tenants is very short—almost as short as the famous chapter on snakes in Iceland—and there are doubtless many persons who would wish that its brevity were due to the same cause. I cannot say that sub-tenants do not exist in the Central Provinces, but I believe I am right in saying that they are comparatively scarce. I am informed that only 22,000 persons have returned themselves as belonging to this class. We have in other parts of the Bill, whilst admitting the expediency of discouraging the practice of sub-letting, admitted the impossibility of preventing the practice when it has once grown up. And when we came to consider what rights should be attached to their status, the conclusion to which we ultimately came was that, at all events in the present condition of the Central Provinces, the need for giving them legal protection was not such as to outweigh the disadvantages arising from the creation of successive strata of privileged classes one superimposed above another. In the Bill which was presented with our third report we had inserted a proviso, the object of which was to protect the sub-tenants of certain absolute occupancy-tenants from excessive enhancement of rents. But, on further consideration, we have come to the conclusion that the protection thus proposed to be given can be safely dispensed with; and accordingly we have omitted the proviso.

"Such of the other provisions of the Bill as it is necessary to refer to relate not to any particular class of tenants, but to tenants in general. Of this kind are the provisions relating to the right to make, and be compensated for improvements, and the provisions as to distraint.

"The Bill gives the first right to make improvements, in some cases to the landlord, in others to the tenant, but provides that neither party shall be able to prevent the other from making an improvement which he himself is unable or unwilling to make. We have enabled the landlord to obtain an immediate

increase of rent for any improvement made by him or at his expense, and at the same time we have made him liable to pay compensation to an ejected tenant for any improvements made by the latter.

"In dealing with the procedure for recovery of rent, we have gone as far as we think safe towards abolishing distraint. What we have retained is, in fact, not distraint. It merely amounts to a recognition that the rent is a first charge on the produce of the land, and, as it embodies, it is believed, the customary procedure of the country, we hope it will work well. The greater security we have given to the tenants will make them much more eager to retain their holdings, and will render the recovery of rent more easy. I believe the experience of the Court of Wards estates goes to show that it is not the occupancy-tenant, but the man who has no rights, who is usually in arrears. Distraint in the form laid down by Act X of 1859 has been almost unknown in the Provinces. But it is believed that, in accordance with old custom, landlords have usually prevented an unsafe tenant from removing his produce until he paid his rent; and the provisions in the Bill are devised for the purpose of legalising, while guarding against the abuse of, this practice. In the last draft of the Bill we have, by an addition to section 17, made a slight extension in the lien given to the landlord over his tenant's crops when stored.

"In minor matters, we have provided for the protecion and equitable treatment of the tenants. For example, section 8 provides for the case where there are several landlords; section 9 for the deposit of rent in a Government treasury; section 16 for the commutation of rent payable in kind; sections 25 to 28 for the avoidance of disputes when rents are paid in kind or by estimate of the crop; section 73 gives the Court power to suspend or remit arrears of rent in cases of drought or calamity; section 74 gives the Court equitable power in dealing with cases of forfeiture of the holding for the breach of a lease, etc.; and section 75 provides for the rights of an ejected tenant in respect of crops on the ground or of land prepared for sowing. All these are measures of help and protection to the tenant, which ought to better his condition. They may restrain or prevent the abuse of power by bad landlords, but no honest and just landlord can fairly object to them.

"The objection brought against the Bill generally by the landlords is that it is a one-sided measure. Any law of this kind must in a certain sense be one-sided. It is avowedly an attempt to strengthen the hands of the tenant against the landlord, and to prevent the abuse of power. Every such law starts with postulating that the parties are not on equal terms. The objection of one-sidedness must therefore be met by an admission. The Bill is necessarily one-sided, but it is not unfair. The question is, does the Bill deny to the landlord anything that is justly his, or does it unduly control the actions of a

good landlord? This question must, I think, be answered in the negative. No good landlord would desire to evict his tenants or harass them by continual changes of land; no good landlord would ask more than a fair rent; no good landlord would desire to confiscate his tenant's improvements, or to force him to pay rent when a calamity had destroyed his produce.

"But a truer description of the Bill is, in my opinion, that it is not one-sided, but compensatory,—compensatory for the additional rights which we have given to the proprietors or landlords by our revenue-system, and for the additional powers of enforcing those rights which we have given them by our law Courts. Without such supplementary legislation as this, our system of administration would have been justly exposed to the charge of being not only one-sided, but unfair. For, just consider who these 'proprietors' were, and what we have made them. Take, for instance, the case, to which I have already referred, of the Hoshanagábád málguzár. Forty-five years ago he was a middle-man receiving a commission of 15 per cent. out of the rents which he collected for the State. He now gets half the rents, and what we propose to do is to prevent him from arbitrarily increasing that half.

"In the matter of jurisdiction, we have endeavour to make the Bill as simple as possible. There are two classes of cases which will arise under the law: one which partakes of an executive character; the other which is of a judicial nature. In the former, we give the executive Revenue-officers jurisdiction; in the latter, we give jurisdiction to the Civil Courts. But, in order to secure in the judges that acquaintance with agricultural and revenue affairs which is necessary for the efficient treatment of this class of cases, it has been provided that a judge of a Civil Court of original jurisdiction shall not, unless he is also a Revenue-officer or Settlement-officer, hear suits under the Act. As the Courts of the Provinces are at present constituted, almost every civil judge of original jurisdiction is also a Revenue-officer. This, however, is a state of things which may not always exist.

"These, then, are the proposals to which we ask this Council to give the force of law. They are, as I said at the opening of my speech, the product of local experience, and framed with special reference to local conditions and local requirements. It so happens that the gentleman to whom just ten years ago the task of framing this law was entrusted has now become Chief Commissioner of the Provinces to which it is to apply. The Bill has been submitted to him for his consideration since he assumed his present office; and, as its provisions differ in some important respects from the provisions of the draft which he originally prepared, it is a matter of no small satisfaction to be informed by him, as we have been informed, that the Bill in its present form appears to him to be an excellent Bill; and that, when he finds that, although its purport

has been made known to the people, there has been no serious agitation against it, and that it has been accepted by the late Chief Commissioner, not to mention the distinguished, experienced and careful officers who gave it its final shape, he feels that he may safely assent to its being proceeded with and undertake to work it. He doubtless recognizes that, though the machinery which it adopts is in some respects different from that which he originally suggested and would possibly still prefer, yet the principles on which it is based are identical, and believes that it is likely to attain the same end though by a somewhat different road.

"I hope that a similar view will be taken of the Bill by those who, accepting as sound the general principles on which it proposes to proceed, judge it in the light of experience derived from other parts of India. For instance, there are obvious differences between the provisions which we have embodied in the present Bill and the provisions which we have embodied in the Bill which is now pending for the regulation of the relations of landlord and tenant in Bengal. There are also differences between the law which we propose for the Central Provinces and the law of landlord and tenant as it stands now in the Panjáb and in the North-West.

"We have not overlooked these differences, but it appears to us that they are not greater than are warranted by what I may venture to call the radical differences between the circumstances of the Central Provinces and the circumstances of, say, Bengal—differences arising out of their past history, their recent treatment and their present economic condition. In the sketch which I have given of the institutions which we found in existence when we took over these Provinces and of the institutions which we introduced into them, I have endeavoured to illustrate some of these differences, and I will not elaborate them further now. But what I would impress on the Council is this, that whilst we have declined to admit that provisions which may be suitable or necessary for Bengal are therefore suitable or necessary for the Central Provinces, so we desire to guard against committing ourselves or any one else to the view that provisions which, on authority of great weight, we have accepted and adopted as suitable and sufficient for the Central Provinces, are therefore suitable or sufficient for Bengal, for the Punjáb, for the North-Western Provinces, or, in short, for any other part of India, except that to which we propose to apply them."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that to section 55 of the Bill the following be added, namely:—

"or that the holding consists entirely of sír-land."

The Motion was put and agreed to.

The Hon'ble MR ILBERT also moved that in section 56, after the words "an ordinary tenant," the following be inserted, namely :—"whose holding does not consist entirely of sír-land and."

The motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that to section 62 the following be added, namely :—

"(5) Nothing in this section shall apply to a holding consisting entirely of sír-land."

The motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that in section 11, after the words "not exceeding," where they first occur, the words "five hundred rupees or when" be omitted; and that the words "exceeds five hundred rupees, not exceeding double that amount or value," at the end of the section, be omitted. He said :—

"My Lord, as I have given notice of some amendments to the Bill, it is, I think, due to the Council to state that I have never been employed in the Central Provinces, and have had no special opportunity of becoming acquainted with the tenures prevailing in that part of the country. If I had reason to suppose that any other Member of this Council was in a better position in this respect, I should have hesitated to propose any amendments until I had first consulted him. But, while I must admit that I may have been led into error in some points by want of knowledge of the country to be legislated for, I do not think that the risk of this is enough to excuse me from giving my best consideration to any Bill that the Council is asked to pass into law; and it is after a carefull examination of the Bill and of the papers circulated with it, that I have come to the conclusion that legislation on the subject is necessary, but that some of the provisions of the Bill are open to objection, while on other points I have been led by a perusal of the papers to accept provisions in regard to the propriety of which I was in the first instance doubtful.

"I have not been consciously influenced by any theory as to what the relations of landlord and tenant ought to be. I have rather endeavoured to ascertain what relations have hitherto existed between these classes in the Central Provinces, and how far the proposals of the Bill to define and improve these relations are consistent with the equitable claims of both parties. The note of the present Chief Commissioner of the Central Provinces, Mr. Jones, on the original draft of the Bill, of which he was the author, supplies much information as to the position of tenants in the Central Provinces, both anterior to British rule

and during the period of transition which preceded the formation of regular settlements and the extension of Act X of 1859 to those Provinces, and further information on the same subject is to be found in some of the opinions collected with reference to Bill No. I, which are to be found in Paper No. 11, especially those given by Colonel Lucie Smith, Commissioner of Chhattisgarh.

"The period of the introduction of regular settlements is of special importance, as it was then that steps were first taken to ascertain the persons to whom proprietary rights belonged, the previous policy of the British authorities in the Ságar and Narbada territories, which had long been under British rule, having been to withhold 'any recognition of positive rights of ownership.' The instructions of the Lieutenant-Governor of the North-Western Provinces for the settlement of those territories, issued in November, 1853, are to be found in Appendix XX to Sir William Muir's edition of the 'Directions for Settlement Officers.' In paragraph 12 of these instructions it was directed that the settlement should be 'concluded on the basis of apparent, or approximate, proprietary right, in so far as such right can with any certainty or confidence be traced, and that the leading object in so doing' should 'be to recognise fixed rights, or claims and interests, in whatever form they may already have grown up.' But 'the subject being one of much admitted obscurity and doubt,' paragraph 13 provided that, 'in order to avoid any future contest or litigation with respect to the rights declared in the settlement-proceedings,' the proprietary title should be formally conferred in every case as 'the creation or free gift of the Government.' Paragraph 16 again refers to cases in which village-communities might be found to have preserved rights having 'the character of a proprietary interest in the soil of an entire village'; while the 14th, 15th, and 17th paragraphs relate to cases in which it was a matter of discretion whether the former málguzár, or the cultivators, should be recognised as proprietors. In such cases, provision was made for cultivators who had been in possession since 1840 being declared proprietors of their holdings, while the person who had hitherto engaged for the revenue, rather from a hereditary tenure of service than from any exclusive right of ownership or occupancy over the whole village-lands, might be recognized, subject to the rights thus conferred upon the cultivators, as the proprietor of the village. In all cases, a careful ascertainment and record of all subordinate tenures and interests was prescribed by paragraph 18.

"It is clear from these instructions that the Lieutenant-Governor did not regard the Ságar and Narbada territories as a *tabula rasa*, throughout which no trace of proprietary rights existed, so that it was open to the Government to confer them at pleasure. On the contrary, he carefully provided for the recognition of all existing rights, whether proprietary or subordinate, while he

also proposed to confer a proprietary title in cases where proprietary rights were either non-existent or the indications of them were so weak that there was serious difficulty in determining to what persons they belonged.

"When the Nágpur Province, which was annexed in 1854, came under regular settlement, the principle laid down in these instructions appears to have been followed; and there also it is probable that, while in many cases proprietary rights had been extinguished, in others they were easily discoverable. Mr. Jones refers to the existence of village-communities, 'though' he says, 'they are as a rule less highly organized than in the North-Western Provinces,' and he guards against its being supposed that his remarks as to the original uniformity of tenures in the Central Provinces refer to anything else than 'the relative position of cultivator and málguzár.' They must not, he says, 'be understood as applicable to the rights of málguzár as against the State, or to the constitution of proprietary bodies and their rights, *inter se*.' When he refers to 'the creation of proprietary right,' he evidently alludes to the cases where such right was conferred upon the *patéls*, through whom the revenue was paid, though they had no real claim to it.

"I have considered it necessary to make these remarks, as in some of the papers submitted to the Council it has been assumed that proprietary rights in the Central Provinces are entirely the creation of the British Government. In a letter by Mr. Lindsay Neill, dated 27th June, 1882, it is not, indeed, assumed, but it is argued at some length, that this is the case. The Lieutenant-Governor in 1853 is likely to have been better informed as to the existence at that time of proprietary rights than local officials 29 years after, more especially as the form of a grant which was adopted was calculated to give rise to the impression that such rights were being conferred for the first time. I do not, however, think that it is a question of much importance whether any proprietary rights existed in the Ságar and Narbada territories thirty years ago, or in the Nágpur Province 20 years ago. The recognition of such rights as already existed would give them new strength, and, when these rights were conferred for the first time by the British Government, no one, I am sure, would now propose to take them away. But still it is worthy of notice that, even when new rights were granted, care was enjoined to ascertain and record all existing rights; and so far as this was attended to, the grants made cannot have curtailed or endangered any rights belonging to others. The fact, which, I think, Mr. Jones, has clearly proved, that rent as distinguished from revenue is, in the Central Provinces, a creation of our rule, is much more material than the origin of proprietary rights, as this fact, combined with the demand for cultivators, goes far to explain the favoured position which even ordinary tenants appear as a rule to have hitherto enjoyed in those provinces.

"It is also clear, both from Mr. Jones' note and from the other papers which have been circulated, that the extension of Act X of 1859 to the Central Provinces has in some parts of the country acted prejudicially to the tenants without rights of occupancy, while in others the general recognition of their claims not to be disturbed in their holdings, so long as they are willing to pay a fair rent, and probably also the amount of land available for cultivation, have hitherto preserved them from injury. On this ground, as well as because Act X of 1859 was originally passed for a country very differently circumstanced from the Central Provinces, and has been shown to be in many respects unsuited to those Provinces, I admit the necessity for legislation.

"And, as regards the measure now before the Council, I may at once say that many of its provisions have my hearty approval. Some of the points on which it appears to me open to objection have been put right by the amendments moved by my hon'ble friend the mover of the Bill, though these do not remove the objections to which the explanation attached to the definition of sír-land in section 3 appear to me to be open. As, however, that explanation has been accepted by this Council when it passed Act XVIII of 1881, I have not seen my way to propose to strike it out. But there appears to be considerable danger that, when a proprietor, who may be aged or infirm, a minor or a female, or otherwise unable to arrange for the cultivation of his sír-land, is obliged to let it out to tenants, the lapse of six years will, under this explanation, extinguish his sír-rights, and he will be unable to get the land back when he becomes able to manage it. I have not overlooked the provision that land is not unoccupied by the proprietor when it is leased with an express reservation of his sír-rights; but, unless education has made greater progress in the Central Provinces than anywhere else in India, it will be long before the great majority of the proprietors know that any such express reservation is necessary, and in many cases there will be no written lease at all. In some of the papers which have been circulated I have noticed references to the ignorance of the Gonds and other classes who enjoy proprietary rights. I also observe that we have no information as to the extent to which land is held by cultivating proprietors in the Central Provinces, though we have very recently been furnished with information as to the area of land occupied by tenants of the different classes recognized in the Bill. But the persons who were recognized at settlement as proprietors of their own holdings would be, as a rule, cultivating proprietors, though they may occasionally have tenants; and I gather that there must be a good deal of land occupied by cultivating proprietors from statements like that made in the memorial of the zamíndárs of the Damoh District (Paper No. 10), that 'in these Provinces the málguzárs are cultivators themselves, their sír-land generally forming the principal source of

their income,' and from the persistence with which the proprietors have urged that sufficient provision has not been made against the growth of tenant-rights over their *sír*-land. The explanation attached to the definition of sír-land is expressly objected to in Papers No. 14, No. 16 and No. 25, in the last of which it is pointed out that no such restriction is to be found in the North-Western Provinces Rent Act; and, where so much protection is given to ordinary tenants as is provided by Chapter VI of this Bill, it becomes extremely important that the amount of sír-land available for occupation by cultivating proprietors should not be reduced in consequence of its being occasionally let to tenants.

"While I have carefully studied the papers submitted to the Council, I am obliged to admit that we are legislating on very imperfect information. There has been no general criticism by local officials of any of the Bills subsequent to Bill No. I, though the Bill framed by the Pachmarhi Committee, on which Bill No. II was based, departed very widely from that Bill, and Bill No. III introduced some important provisions which did not appear in any of the earlier Bills. One of these provisions has been amended at the instance of the late Chief Commissioner, and some other amendments have been made, apparently in consequence of representations by landowners; but we have very little guarantee that the provisions of the Bill, as it now stands, are suited to the circumstances of the Central Provinces; and if the passing of some of the amendments now proposed should lead to the Bill being recommitted, I hope the opportunity will be taken to obtain the opinions of local officers on the suitability of those provisions to the country and for the people for whom it is proposed to enact them.

"I now come to the amendment to section 11.

"The words which I propose to strike out were first introduced into the section by Bill No. III. The effect of this amendment would be that, in case of exaction, the penalty which the tenant might recover would not exceed double the amount illegally levied. This is what was proposed by Bill No. III, which was founded upon the Bill drafted by the Pachmarhi Committee, and it corresponds with the provisions of section 48 of the North-Western Provinces Rent Act, XII of 1881.

"It is only in cases when the amount illegally exacted is very small that there could be any doubt whether double the amount would fully compensate the tenant; and small exactions are most likely to be attempted when the landlord believes that he is entitled to the money. Mistakes on a question of this nature may easily occur when the landlord is a cultivating proprietor no better informed than his tenants. The landlord may, for instance, think himself entitled to a small cess, which has been usually levied in the neighbourhood, but which is not, strictly speaking, part of the rent of the land, while, if the

cess were unsual, it is almost certain that the tenants, protected as they will be under this Bill, would refuse to pay it. If a tenant finds that he has paid a rupee which was not due, he would probably be sufficiently compensated by a payment of two rupees, in addition to his expenses in recovering this sum, and no Court would award him Rs. 500; while, if he were persuaded to sue for that amount, he would render himself liable to heavy costs. If the act of the landlord amounts to extortion, he would, of course, be criminally, as well as civilly, liable.

"No reason was given in the Further Report of the Select Committee for providing a penalty not exceeding Rs. 500, nor does it appear from any of the papers that cases of exaction have been common in the Central Provinces. In one of the papers, a petition from the málguzárs of Raipur (No. 28), it is alleged that 'the judicial records will prove that the málguzárs do not realize more than their just dues,' and the petitioners protest against being singled out as a special class of offenders and 'threatened with punishment for offences which they do not commit.'

"I propose the omission of the words adding this penalty, as I do not think that they will benefit the tenants, who may be tempted by them to sue for unduly large sums, while they are calculated to irritate the landlords."

The Hon'ble MR. QUINTON said:—"My Lord, the object of this amendment is to limit the discretion of the Court by restricting the penalty, which it has power to impose in cases of illegal exaction of rent, to double the amount so exacted in excess of the rent payable. Cases are conceivable where such a penalty would be quite inadequate. In Act X of 1859, the corresponding provision was similar to that now proposed by my hon'ble friend, but the North-West Act of 1873, section 49, fixed the sum awardable to the tenant as compensation in such cases at a sum of Rs. 200 in addition to double the amount exacted, no doubt because the earlier provisions were found inadequate.

"The present Bill adopts the principle of naming a sum which the amount awarded is not to exceed, leaving it to the Court to decide what compensation or penalty is proper in each case. As a fact, the discretion may be in some cases more restricted than that given by the North-West Act; and, as exaction of rent is an offence which it is highly expedient to discourage, as any improper exercise of the discretion can be checked by the Appellate Courts, and as no evil consequences have been shown to result from this principle, already adopted by the legislature, I must express my opinion that there are not sufficient grounds for discarding it, and vote against the amendment."

The Hon'ble SIR STEUART BAYLEY, said:—"My Lord, I also must oppose this amendment. My hon'ble friend would return to the penalty of twice the

amount extorted. This was the old penalty in Act X of 1859, and how has it worked? Hardly ever have I known it worked. Yet it cannot be said that the extortion of illegal additions to the rent is unknown. The Members of this Council who heard the Hon'ble Major Baring's speech on the Bengal Tenancy Bill will recollect the interminable list of illegal cesses quoted by him from the correspondence of 1874 as taken in the 24-Parganas. The same correspondence showed how universal the complaint was, and left on me the impression that a cultivator might well have to pay a rupee extorted illegally for every two rupees he paid as legal rent; and the reason why such extortion is not suppressed by a mild penalty such as twice the amount extorted is obvious. The penalty could only be enforced after a special suit by the raiyat, with due formality and full proof in each case. This was not to be expected, and, as a matter of fact, the penalty was a useless threat. It is obviously worth the landlord's while to risk such a penalty, which would, if enforced, be nothing to him, though the extortion might be a great deal to the raiyat. No; if it is worth having a penalty at all, it should be substantial. Nor will such a penalty, as urged, be cumulative. The extortion may be general, but, unless each raiyat brings a suit, the penalty will not be cumulative; and in such cases each raiyat does not bring a suit. One raiyat will have to bell the cat, and, the penalty once enforced, the others might hope to get the advantage of it.

"The amount of penalty, it should be observed, is discretionary with the Court. We only fix the maximum. The Court may be trusted not to levy a penalty disproportionate to the offence. I must oppose the amendment."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 29, sub-section (*2*), after the words "an ordinary tenant," the words "whose holding does not consist entirely of sír-land" be inserted. He said:—

"My Lord, I have already pointed out that the protection of the proprietor's cultivating rights in his sír-land is the necessary complement of the provisions of the Bill in favour of tenants. If, then, he finds it convenient to let that land for a time, his tenant should not be allowed to insist on his making improvements, nor to make them himself unless with the landlord's consent. The North-Western Provinces Rent Act, XII of 1881, section 44, allows no tenants other than tenants at fixed rates or occupancy-tenants to claim compensation for improvements made without the consent of the landlord; and, under that Act, as under section 41 of the present Bill, occupancy-rights cannot be acquired in sír-land. The amendment proposed also seems in harmony with clause 4 of section 30, which, in providing for improvements made by tenants before this Act comes into force, excepts sír-land."

The Hon'ble MR. QUINTON said :—" My Lord, there are few things in this country more necessary for the good of the community generally, and the welfare of the agricultural classes in particular, than that landlords and tenants should have the strongest inducements to effect improvements in the land held by them as a protection against famine, and a means of promoting increased production of food to meet the growing demands of a rapidly increasing number of mouths. All legal obstacles which obstruct the carrying out of improvements should be removed so far as this can justly be done. This amendment of my hon'ble friend, if accepted, will perpetuate, instead of removing, such an obstacle.

"It may be true that it will not operate in numerous cases, but still, if a cultivator of sír-land has the will and the means to make an improvement, it is certainly for the public advantage that he should be empowered by law to call on his landlord to make it, and, in case of the landlord's refusal, to make it himself. Amendments have been introduced by my hon'ble and learned friend in charge of the Bill which will guard the rights and interests of minors and widows in sír-land let to tenants. But it is of the highest importance that the capabilities of such land, as well as of all other land, should be developed at the earliest moment; and the reluctance of the landlord to allow of a tenant effecting such development from a chimerical fear that an unjust award of compensation might subsequently be given against him should not be allowed to outweigh the general good. He will, it is true, be liable to pay compensation for improvements, but the liability is measured by the increase given to the letting value of the land and other considerations stated in section 31, by which his interests are adequately protected."

The Hon'ble SIR STEUART BAYLEY said :—" My Lord, I am inclined to accept Mr. Barkley's amendment. I do not know much of the custom in the Central Provinces in regard to dealing with sír-land, but I should think the practical effect would be very small If I understand rightly, the man who cultivates a málguzár's sír-land can rarely be considered a permanent tenant of that land. The landlord employs him practically as a labourer, giving him his payment in the shape of a share of the produce. The tenant's interest is from year to year, the landlord's interest is permanent; and I think it unfair to the landlord, in regard to land which is strictly his own, and in which the tenant has no durable interest, that the latter should be able to create an interest by making an improvement which his landlord may be unwilling or unable to make, thereby preventing the landlord from ousting him except at heavy expense. I draw the most marked distinction in this respect between sír-land and raiyatí lands, and, while in the latter I think the tenant should have every possible security and every encouragement to improve, I see no ground

for giving him similar security in land which is distinctly the personal property of the landlord. I see no objection to the present section in cases where the landlord may find it convenient to give a tenant a lease of (say) three or more years, but, in regard to sír-land generally, I would vote for Mr. Barkley's amendment."

His Excellency THE PRESIDENT said :—"I should just like to ask one question as to the effect of this clause. The hon'ble member moves an amendment to section 29, but moves no amendment to section 30 ; and I am not quite clear whether, supposing an ordinary tenant of sír-land were to make an improvement with the consent of his landlord, there would be any provision in the Bill which would secure him legal compensation for the improvement so made."

The Hon'ble MR. ILBERT said that an improvement so made would not be made "in accordance with this Act," and therefore would not entitle the tenant to compensation under section 30. His inclination was to agree with the recommendation of the Hon'ble Mr. Quinton that the Bill be left as it stood ; but, as it was an arguable point, he was quite content to adopt the view of the majority of the Council. His hon'ble friend Mr. Barkley was not quite accurate in saying that improvements in sír-land were excluded from the operation of the Bill. Sub-section (*4*) of section 30 merely said that the presumption as to improvements having been made with the landlord's consent should not apply to improvements made on sír-land.

His Excellency THE PRESIDENT said :—"I agree with the Hon'ble Sir Steuart Bayley in thinking that it is very desirable to maintain the distinction between sír-land and raiyatwárí land. The amendments introduced by the Hon'ble Mr. Ilbert all tended in that direction. I should, therefore, be personally prepared to accept Mr. Barkley's amendment of section 29, provided that it is made clear that, if the tenant of the sír-land makes an improvement at his own expense with the consent of his landlord, he shall have a legal right to compensation. I am quite ready, in regard to sír-land, to make the consent of the landlord a *sine quâ non;* but I am not prepared to admit that, that consent having been obtained, the tenant shall be entitled to no compensation for improvements made at his own expense. That appears to me to be a highly unjust proceeding and one which ought to be guarded against by the law ; but, if that can be done, I shall be prepared to accept Mr. Barkley's amendment."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT moved that in section 30, sub-section (*1*), for the words "which have been made in accordance with this Act by him or by the persons under whom he claims," the following shall be substituted, namely :—"which he or the persons under whom he claims may have made in accordance

with this Act or with the landlord's consent otherwise than in accordance with this Act."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that to section 43, sub-section (*1*), the words "or unless the holding has been inherited from an ancestor common to him and the deceased tenant" be added. He said :—

"As Mr. Jones' Draft Bill is not with the papers circulated, and the subject is not referred to in his note and commentary, I have been unable to ascertain whether the exclusion of collaterals from succession to occupancy-tenants was proposed by him. They are excluded by section 81 of Bill No. I, but, under the previous law, section 6 of Act X of 1859, there was no bar to the succession of collaterals. When Bill No. I was circulated for opinions, Colonel Lucie Smith, the Commissioner of Chhattísgarh, stated that the proviso excluding collateral relatives 'is opposed to the custom of the country,' and considered that it should be omitted (Paper No. 11, page 47). Afterwards the Nágpur landholders, on the Bill as revised by the Pachmarhi Committee being communicated to them, remarked on section 14 in a letter to Mr. J. W. Neill, Officiating Judicial Commissioner: 'We allow collateral succession at present, and we will not object if the scope of the section be enlarged so as to allow of such succession in future.' It appears, therefore, that they did not desire a change of the existing law on this point. After Bill No. II was published, the tenants of the Harda tahsíl of the Hoshangábád district objected to section 35 as excluding the succession of collaterals, and referred to section 6 of Act X of 1859 as permitting it (Paper No. 15). On the other hand, the landlords of the Hoshangábád and Narsinghpur districts, in Paper No. 14, approved of the Bill on this point, and the opinion submitted by them was afterwards adopted by the landlords of certain villages of the Nágpur division in Paper No. 16. In none of the remaining papers does the subject appear to be noticed.

"It is true that the law has been changed in the North-Western Provinces by section 9 of Act XVIII of 1873 (re-enacted in Act XII of 1881), but I do not think that this is a reason for making a change unfavourable to the occupancy-tenants in the Central Provinces. I can understand that there may be reasons for excluding remote collaterals, whose ancestors never held the land, from succession to occupancy-tenants, but such reasons would not be applicable to the claim of one brother to succeed another in land in which their father had acquired occupancy-rights. The Bill allows such succession in case the brothers held the land as co-sharers; but, if the land was not enough for both, and one gave up his share to the other and sought for other means of support, or if the hold-

ing had been divided between them, as it might be, with the landlord's consent, the right to succeed would be lost. Suppose that, on the death of a father who held land as an occupancy-tenant, there are three sons entitled to inherit, but the land is not more than enough for two. One may enlist in the army or leave the village to look for employment elsewhere, while the other two succeed their father. One of the latter dies, leaving no heirs but his brothers. If the holding has not been divided, the brother who has remained at home will succeed, but the brother who gave up his share will be excluded. Even if both the brothers who succeeded to the holding die and the absent brother is their sole heir, he will not be allowed to return and take up the family holding. A law which would lead to such results as this is not likely to commend itself to Native public opinion, and, when it came to be understood, there would be a strong temptation to all heirs to cling to their ancestral holding, even though it were manifestly inadequate to support them. If any one were to leave, some arrangement would be come to by which he might appear to continue a co-sharer with those who remained.

"In order to remedy this, I propose, as in the Panjáb Tenancy Act, to allow collaterals in the line of descent from the person who acquired the holding to succeed in the absence of lineal heirs."

The Hon'ble MR. QUINTON said :—"As explained by my hon'ble friend, the Bill, following the precedent set by the North-Western Provinces Rent Act, limits the succession of collateral relatives to the occupancy-rights of a deceased tenant to such collaterals as were co-sharers in the holding at the death of the tenant. The amendment proposes to extend this limitation so as to bring within it all collaterals of the deceased, provided that the holding was inherited by them from an ancestor common to him and them.

"The objections to this course are, in my mind, great. It will introduce all the intricacies of Hindu law into the determination of questions respecting the ownership of occupancy-rights, which it has hitherto been the policy of the legislature to exclude. It will undoubtedly foster litigation and promote disputes among conflicting claimants, and, most important of all, will encourage sub-letting by absentee occupancy-tenants who have inherited rights under the provisions of the amendment."

The Hon'ble SIR STEUART BAYLEY said :—"My Lord, the question here raised is whether in the Central Provinces we should made the custom follow that of the Panjáb, or keep it, as in the Bill, in accordance with the law prevailing in the North-Western Provinces. The Bill as drawn follows the North-Western Provinces law, and, considering the very complete sifting which the Bill has had at the hands of experienced local officers, I would

a priori accept their view. But, moreover, I think the Panjáb rule, however reasonable in a system founded on the supposition that the cultivators are themselves the proprietary body, is hardly adapted to a system where a single landlord is responsible for the land-revenue of his estate. The landlord must, in case of land being vacated by death, find another tenant. Where a son is on the spot, he succeeds by law—where a near relative is available, he would generally succeed by custom; but it seems to me most inequitable that the landlord, or the tenant who in the absence of other applicants he may have put in on the land, should be at the mercy of any one of a hundred collaterals who may have entirely separated himself from the land, and may turn up and claim the tenure any time within 12 years. The landlord can know nothing about these, and he would probably not only lose the tenant of his choice, but have to compensate him for being turned out. There is a still more serious objection on general principles in the tendency to *morcellement* and to consequent litigation, which would be involved by giving all collaterals the right to participate in every holding left vacant. Nor do I see how Mr. Barkley can reconcile his amendment with the principles laid down in section 33 of the Bill regarding relinquishment. By section 33 (*b*) a tenant is presumed to relinquish his holding by ceasing to reside. By section 34 a tenant is presumed to relinquish his holding by leaving the land uncultivated and the rent unpaid for two years even when he resides in the village. The collateral in the case supposed by Mr. Barkley has altogether ceased to reside in the village, and, instead of the limitation given in section 34, he would apparently, if the amendment be allowed to stand, be able to claim the inheritance—at least I suppose this would be the effect—under the ordinary law of limitation.

"I presume also the amendment would have to be applied to section 61, also regarding ordinary tenants. To sum up, I would oppose the amendment because it is contrary to the opinion of the best local officers, because it is opposed to public policy by its tendency to burthen the land with more mouths than it can support, because it introduces all the complexities of Hindu law into the land-system and tends to foster litigation, because it is inequitable and oppressive to the landlord and his *boná fide* tenant, because it is contrary to the principles which regulate relinquishment under the Bill."

The Hon'ble MR. ILBERT also opposed the amendment.

MR. BARKLEY stated in reply that, under Act X of 1859, collaterals had enjoyed the right of succession to occupancy-tenants in the Central Provinces, in default of lineal heirs, for the last 19 years; that there was no relinquishment of the holding in the lifetime of the deceased tenant, succession to whom was in question; and, if the heir did not come in within two years, there was no

reason why section 34 should not apply; and that he had not considered it necessary to propose any amendment to section 61, which related to a different class of tenants.

His Excellency THE PRESIDENT said:—"The question is one not altogether free from difficulty, but the weight of legal opinion appears to me to be so decidedly in favour of the Bill and opposed to the amendment, that I shall vote against it."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 58, sub-section (*2*), clause (*b*), for the words "equal to," the words "not less than three times and not exceeding" be substituted. He said:—

"My Lord, the provisions of this chapter give a great degree of protection to ordinary tenants. Their tenures are made heritable, and, if their rent is enhanced under the provisions of this chapter, it cannot be again raised under these provisions until seven years have elapsed. The only check upon the amount of enhancement, however, is that provided by this section combined with sections 55 and 57, that, in case the tenant does not agree to pay the enhanced rent demanded, the landlord can only proceed by suing to eject him; and, if ejectment is decreed, the landlord must pay into court any sum declared to be due as compensation for improvements, and further, as compensation for disturbance, seven times the yearly increase of rent demanded. Though it may be doubted whether this sufficiently provides for the case of an improving tenant, who does not wish to give up his land, and who, rather than do so may be compelled to pay an enhanced rent due to his own improvements, it cannot be denied that it affords a very efficient protection to the ordinary tenant in all other cases. The exceptional case is that of the sitting tenant, which is at present being discussed in England by men like Professor Bonamy Price and Sir James Caird. I was at first, I confess, doubtful as to the principle of giving heritable rights to ordinary tenants, which was not proposed either in Bill No. I or in the Pachmarhi Committee's draft Bill. But, on examining the opinions given on Bill No. I, I found that Colonel Lucie Smith, Commissioner of Chattísgarh, urged (Paper No. 11, page 43) that all tenants in Chattísgarh are entitled to hold their land, being other than sír, so long as they pay a reasonable rent, and quoted depositions of málguzárs in a case in the neighbourhood of Raipur in support of this (page 42). In a subsequent communication, dated 20th December, 1880, he stated that there was 'hardly a man among the málguzárs who would come forward openly and assert that he has the right to eject a raiyat who is willing to pay a reasonable rent;' and he quoted a minute by Sir George Campbell, in support of an argument he had previously

urged, that a custom which prevailed there, of the raiyats redistributing the lands amongst themselves, was an indication of proprietary right, though at settlement the managers of the villages had, by mistake, been recognised as proprietors. Again, while the Pachmarhi Committee's Bill had provided in section 23 that ordinary tenancies should lapse on the death of the holder, a pleader, Mr. Bipin Krishna Bose, who had previously acted for the Nágpur landlords, suggested to the Judicial Commissioner that heirs who had been members of a joint family with the cultivating tenant should be allowed to succeed on his death. Bill No. III made the rights of ordinary tenants heritable, and in the Report of the Select Committee it was stated that it was believed that the amendment would be in consonance with the general feeling of the people. Opinions have since been received from landlords of the Nágpur Division, and of the Hoshangábád, Narsinghpur, Betul and Raipur Districts; and in none of these has this amendment been objected to, though other provisions of the Bill have been warmly canvassed. The Raipur landlords indeed admitted that, before the introduction of Act X into the Chhattísgarh Division, ejectments of tenants were unheard of, and that tenants should not be ejected so long as they pay fair rents. As the Bill puts a stop to the growth of occupancy-rights by 12 years' possession, the heritable right conceded to ordinary tenants of other than sír-land may be regarded as a compensating advantage; and, as the concession has not been objected to from any quarter, and in some parts of the country, at least, the right of such tenants not to be ejected so long as they paid reasonable rents was recognized, I see no reason to call in question its propriety. It would, however, be valueless unless there were some means of protecting the tenant from unreasonable enhancement of rent, and the provisions of section 58 furnish a convenient means of preventing this in most cases; and, though the principle of compensation for disturbance is objected to in some of the papers received (Nos. 25 and 28), the landlords of the Nágpur Division have accepted it (Paper No. 25), only urging that seven times the yearly increase is too much, and that five times would be a fair compensation.

"I think the Bill errs in laying down an unduly rigid rule on this point. There may be cases in which seven times the yearly increase demanded would not be excessive. There are tenants who, if the passing of this Bill were delayed, would acquire occupancy-rights under Act X of 1859 within a year, and, when the growth of such rights under that Act is stopped, there will be cases of ordinary tenants whose families have held the land for two or three generations. Such tenants would usually pay any rent the land could properly yield rather than give it up, and if an excessive rent were demanded to compel them to quit their holdings, it would not be unfair to allow seven times the increase demanded, especially if the tenants were already paying as much, or nearly as much, as they ought to be asked

to pay. But in other cases, the tenant may have held the land only for a year or two, without paying any premium on entering, and perhaps at a low rate of rent. In others, again, the land may have been let on favourable terms for a period of years in order to get it brought under cultivation. In the one class of cases, the claims of the tenant to compensation for disturbance would be but small; in the other, seven times the increase demanded, even though that increase was not unreasonable in amount, might be an excessive sum. If, for instance, the tenant held at half the normal rate of rent, and the landlord proposed to demand the normal rate, the tenant, if he chose to give up his holding, would get 3½ years' rental, in addition to any compensation for improvements which might be due him.

"I therefore propose that the Court which passes the decree should be allowed to fix the compensation, with regard to the circumstances of each particular case, at from three to seven times the increase demanded. The compensation thus could not be merely nominal unless the increase of rent demanded was nominal, while it might be large in cases in which the tenant was entitled to special consideration. It would rest with the court to adjust it according to circumstances, and this, I think, would be a more satisfactory arrangement than to give a fixed number of times the increase demanded. It might also facilitate arrangements out of court, where the landlord's object was to resume his land, which he can only do by agreement with his tenant. He might say to his tenant: 'You have held my land for four or five years; you have made no improvements; it is now convenient to me to take it into my own hands, but I can only do so by asking an increase of rent which you will not give. I therefore propose to add one-half to the rent, and offer you three times the yearly increase.' The tenant might say: 'I am not prepared to pay the increased rent, but the court may give me more than you offer. I am ready to give up the land for five times the yearly increase.' If the landlord agrees, the tenant would get 2½ years' rental, and if the landlord and tenant agree to four times the increase, the tenant would get two years' rental, to surrender land he had held only a few years.

"The principle of compensation for disturbance is entirely new to Indian law, and it may therefore not be out of place to remind the Council that the Irish Tenancy Act, in which this principle was first recognized, allows a discretion to the court to give compensation for disturbance not exceeding so many years' rental, the maximum varying according to the size of the holding, while no minimum is prescribed."

The Hon'ble MR. QUINTON said:—"This is one of the means of protection for ordinary tenants devised by the framers of the Bill in lieu of the growth by prescription of rights of occupancy, and of which they as a class have been

deprived, and it is intended to operate as a check upon rack-renting. Seven times the yearly *increase* of rent demanded seems no immoderate compensation to award to a tenant who may be driven out of house and home with no resource before him but starvation; and, as the Select Committee have after mature deliberation accepted this amount as the minimum likely to prove effective for the object in view, I see no cause for giving the courts any discretion in the matter. It is difficult to see on what principles such discretion could be exercised; so that we should have to expect widely different judgments from different judges, and, as a consequence, fertile crops of litigation and discontent. This is pre-eminently one of the cases in which a hard-and-fast line is advisable. The minimum suggested in the amendment, namely, three times the increase demanded, would leave it in the power of any judge to defeat the avowed intention of the legislature."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, this amendment also, I fear, I must oppose. It introduces an element of elasticity no doubt, which is in itself desirable, but it also introduces a far greater element of uncertainty which would be most prejudicial. Doubtless the limit of seven times the amount of enhancement is arbitrary; but it was come to after very full consideration, and was discussed at two separate meetings of the Select Committee. The original proposal was ten times. This was considered too much in a temporarily-settled province, where the landlord was liable to have his revenue enhanced at the next settlement, as the enhanced rent which *ex hypothesi* he would receive from the incoming tenant might not pay him a fair interest on the compensation he would have to pay the outgoing tenant. After several proposals the amount was reduced to seven. My great objection to Mr. Barkley's proposed amendment is that, under the discretionary rule, not only would the landlord never know exactly what risk he ran in ousting a tenant for refusal to pay an enhanced rent, but, worse than that, the tenant would never know whether it was better worth his while to pay or to refuse. Each case would be a speculation in litigation. The courts would have no practical guide. Another objection is that the system itself is experimental and may possibly not work well; but, under the Bill as it stands, it would at least work consistently, and its action could be watched. If it broke down, the Government would know why, and would be able either to withdraw it or to strengthen its weak points. Under the proposed amendment, one could never judge fairly of the experiment, because its working would differ with the personal equation of each Revenue-officer. It is certainly better, in introducing an important experiment of this kind, about which, as Mr. Ilbert has shown, there is room for various opinions, that the conditions of its introduction should be fixed and known, and that they should not vary with the varying idiosyncrasies of every officer."

His Excellency THE PRESIDENT said :—"I cannot accept this amendment. The question, as my friend Sir Stcuart Bayley has said, has been extremely carefully considered by the Select Committee and the Government. The original proposal was to fix the rate at ten times the increase, but, in consequence of representations received from the Central Provinces, that figure was reduced to seven times the increase of rent—a very small amount to be demanded for compensation for disturbance, and very greatly less than that demanded under the Irish Land Act. This is making the experiment on a small scale. It appears to me to be sufficient for the circumstances of the Central Provinces, where population is thin and where farms are rather seeking for tenants than tenants for farms. It seems to me to be the least that could be proposed, and, therefore, I cannot accept the amendment proposed by my hon'ble friend."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that for section 62 the following section be substituted, namely :—

"62. The landlord of any holding held by an ordinary tenant may confer upon him the rights of an occupancy-tenant in respect of the holding ; and the landlord of any holding held by an occupancy-tenant or an ordinary tenant may confer upon him the rights of an absolute occupancy-tenant in respect of the holding ; and a person upon whom such rights are so conferred shall, for the purposes of this Act, be deemed to be an occupancy-tenant, or an absolute occupancy-tenant, as the case may be."

He said :—

"This, my Lord, is the most important of the amendments of which I have given notice, and the section to which it relates is the only one in regard to which I find myself absolutely at issue with the principles adopted in the Bill. My objections to that section are so strong that, if it is allowed to stand, I shall, though with regret, feel it my duty to vote against the passing of the Bill.

"This section, like that giving heritable rights to ordinary tenants, was first introduced in Bill No. III, nothing similar having appeared either in the original Bill or in the revised draft prepared by the Pachmarhi Committee. It cannot be said to have been suggested by any of the opinions received from the Central Provinces, and the only opinions given after Bill No. III was published, except that of the Chief Commissioner himself (Paper No. 20), are strongly opposed to it. Unfortunately, these are the opinions only of landlords, the late Chief Commissioner not having thought it necessary to consult any of the local officers as to the changes made by the Bill No. III. But the landlords of the Nágpur Division (Paper No. 23) denounced the section as a departure from

what they called the Pachmarhi compromise, that is, the Pachmarhi Committee's draft Bill, which they had expressed themselves willing to accept, and as an encroachment on their rights, and urged that the compensation proposed to be given to the landlord is wholly inadequate. The opinion of the landlords of the Hoshangábád, Narsinghpur and Betul Districts (Paper No. 25) was similar, except that they did not refer to the Pachmarhi Bill. The landlords of Raipur (Paper No. 28) objected to the section that it arbitrarily interferes with voluntary contracts and nullifies the provisions contained in section 41, clause (*c*), and urged that, if a tenant desired occupancy-rights, he should pay at least six times the rental. The Chief Commissioner forwarded a copy of this petition without comment (Paper No. 29), remarking that it accepted the principles of the Bill, but stated certain objections to some details, which it was unnecessary for him to discuss. It is, I think, to be regretted that he did not discuss the objections taken to section 62. All that the Select Committee say in support of this section, the provisions of which do not appear to have been suggested by any local authority, and have been so strongly objected to by the landlords, is that—

'The growth of occupancy-rights by lapse of time having been stayed, we think, with the Famine Commissioners, that some means should be provided by which a thrifty, industrious tenant can raise his status. The provision we have introduced can in no way injure the málguzár, while it holds out a prospect to the tenant which will induce him to retain and improve his holding. We have little expectation that tenants will avail themselves of this privilege for a long time to come, except in a few cases.'

"The landlords, I observe, contend that it is likely to be very largely taken advantage of when the power becomes known, but it is of course possible that they are mistaken as to this. It may be that few tenants will be willing or able to give 2½ years' rental for the advantages enjoyed by an occupancy-tenant over an ordinary tenant protected by Chapter VI. But, if so, the benefit to the tenants will not be very great.

"I do not know how far the Famine Commissioners are responsible for suggesting a section of this nature, but, assuming that the suggestion is theirs, I do not think that their authority is so conclusive that we should refrain from discussing the merits of the proposal.

"My own objections to it, being objections of principle, can be stated very briefly. They may be summed up in the four following propositions: 1st, that to give the tenant power to compel the landlord to sell a portion of his rights is an encroachment on the rights of the landlord; 2nd, that, while rights of property may be interfered with by the legislature when public interests require this, and on reasonable compensation being made to the persons whose rights are interfered with, all unnecessary interference with such rights

should be avoided; 3rd, that, in the present case, there is no evidence that public interests render it necessary that tenants should be empowered to compel their landlords to sell them occupancy-rights; 4th, that, even assuming such necessity to be established, there is no evidence that 2½ years' normal rental would compensate the landlord for the alteration in the status of his tenant.

"As regards the first proposition, I do not see how it is possible to deny the encroachment upon the landlord's rights. The section does not protect any existing right of the tenant, but gives him a power to acquire new rights without the landlord's consent. The prenciple is precisely the same as if it were proposed to empower the tenant to buy absolute occupancy-rights at five years' normal rental, or proprietary rights at 8 years' normal rental. Whether these sums represent the value of the interests sold or not, the landlord has a right not to be compelled to part with those interests, unless, for sufficient cause, the legislature deprives him of this right.

"The second proposition is scarcely likely to be disputed in this Council, as it is difficult to see how it can be disputed by any one who does not disapprove of private property being recognized at all.

"The third proposition raises a question of evidence, and I think I am entitled to ask for the evidence of necessity. It tells against the existence of any necessity that the local authorities have not asked for the grant of such a power to ordinary tenants, and were originally content to give them much less protection than is given by the other provisions of this chapter. Mr. Grant, in introducing Bill No. I, urged the necessity of shunning heroic remedies, and, if it has since been found advisable to prescribe such remedies, a clear case of necessity for doing so should certainly be made out.

"The fourth proposition also raises a question of evidence. The Select Committee say that the provision they have introduced can in no way injure the málguzár, but I have been unable to discover the proof that the difference between occupancy-rights and the position of an ordinary tenant is not worth more than 2½ years' rental in many instances. The only test of its value would be to ascertain what the tenant would pay and the landlord would accept in consideration of the superior status being conferred; but, unless free contract is allowed, this test cannot be applied. The difference may be worth five years' rental, or it may be worth only one. It may be worth five years' rental in one case, and only one year's rental in another. In the latter case, the section will have no operation; in the former, the landlord will be compelled to sell his property for half its value. How can it be said that in such a case he will be in no way injured? In short, except in the cases where the right to be

purchased is exactly worth two and a half times the rental, the section must either be inoperative or the landlord must part with his property for less than its value.

"If it were shown to be necessary on public grounds to give this power to tenants, then, instead of fixing an arbitrary value, some machinery should be devised for determining the value in each instance, when the parties did not themselves agree as to the sum to be paid. I consider the absence of any such machinery, and the absence of proof of necessity for conferring such a power, insuperable objections to the section as framed.

"But I think that in many cases landlords who find it necessary to raise money would have no objection to sell occupancy-rights to their tenants, if no compulsion existed. They would thus, instead of losing their land altogether by sale, or losing control over it for a time by mortgage, retain a substantial interest in it, though one of smaller value than that they previously possessed. And the proper sum to be paid would be ascertained by agreement between landlord and tenant, both parties being in a better position than almost any one else to judge of the value of the interest sold. If the compulsory power is retained, the landlord would feel its existence a grievance, even if the tenant did not exercise it; but in the absence of such a power, there would be no reason why he should not be willing to give a thrifty, industrious tenant a superior status, when this could be done without injury to himself. This would to some extent meet the views of the Famine Commission; and, as the Bill does not provide for the purchase of occupancy-rights otherwise than by section 62, I have proposed a new section to take the place of section 62 which will give effect to such transactions. The second proviso to section 80 of Bill No II contained a provision of this nature, suggested by the Pachmarhi Committee's Bill."

The Hon'ble MR. QUINTON said:—"My Lord, this amendment, like the preceding, strikes at the root of one of the essential provisions of the Bill. For reasons which appeared to them of great force in the Central Provinces, and which I for one am not prepared to dispute, the Select Committee have omitted from this Bill all provisions enabling ordinary tenants to acquire rights of occupancy by prescription in the lands held by them, but they had no wish to leave the cultivators of the soil at the mercy of the landlords and without hope of raising their condition.

"To guard them against rack-renting and capricious eviction, measures will be found in the Bill which it is to be hoped will prove efficacious for that purpose, and to enable the thrifty and industrious tenant to better himself the section now under discussion has been drafted. The twelve-years' rule, coupled with an unrestricted power of eviction, in effect left it with the land-

lord to determine whether rights of occupancy should or should not be acquired by tenants. A vigilant landlord always had the means of preventing the accrual of such rights by the simple expedient of turning the tenant out of his holding. The result has been that these prescriptive rights have been attained at the cost of much ill-feeling, and that each party is on the watch to take advantage of any omission, mistake or misfortune on the part of the other.

"It is not to be supposed that these consequences were within the intention of the framers of Act X of 1859, and, to avoid them and bestow a substantial instead of an illusory benefit upon the tenant, the present section makes it obligatory on the landlord to confer occupancy-rights on an ordinary tenant on tender of a sum equal to $2\frac{1}{2}$ times the rent paid, or equitably payable according to the decision of the settlement-officer for the holding.

"The amendment of my hon'ble friend reverses all this, and throws things back into their old state, by making the consent of the landlord a condition precedent to the acquisition of such rights, and leaving the terms of the bargain to be adjusted by mutual agreement. He must be a man of sanguine temperament who expects that such provisions would ever have any operation.

"The measure embodied in the section is in accordance with the recommendation of the Famine Commission, and the only objection which I have hitherto heard urged against it is that, from poverty or other reasons, tenants may fail to take full advantage of it."

The Hon'ble SIR STEUART BAYLEY said :—"My Lord, this amendment I cannot support. Mr. Barkley's proposal would practically abolish the principle of section 62. The section was introduced as a counterpoise to the abolition of the twelve-years' rule. It was felt that ordinary tenants would want some protection, and compensation for disturbance was provided. It is impossible to say how this principle will work, as, though we augur well of it, it is admittedly experimental. If it fails, the ordinary tenant would be, to a great extent, unprotected, and his position under the landlord's power to rack-rent would probably deteriorate. Moreover, as time goes on, since occupancy-rights can no longer be acquired by the prescriptive title of twelve years' holding, it is quite certain that the tendency will be for the class of occupancy-tenants to decrease, and for that of unprotected tenants to increase; and it seemed absolutely necessary, as a counterpoise to this tendency, to give ordinary tenants some means of protecting themselves by the acquisition of occupancy-rights. The particular rate of $2\frac{1}{2}$ years' purchase may be open to objection. I can only say it was adopted after careful consideration by those most competent to advise the Committee, but I cannot approve of the Bill being shorn of the principle altogether. If I may take an illustration from another province, I would refer to the use

that the raiyats in Eastern Bengal made of the increased receipts coming to them from jute-cultivation. They found themselves, as we fear the Central Provinces tenants may find themselves, insufficiently protected from arbitrary enhancement, and, as soon as they acquired the means, a movement set in, under which numbers of these raiyats, by payment of a large premium, got from their landlords a permanent lease of their lands. The permanently-settled Bengal Government is unaffected by this movement. In a temporarily-settled province, no doubt, the position, so far as the Government revenue is concerned, is different. But we wish a similar principle to apply, and we wish to facilitate it, by giving the raiyat the right to protect himself by acquiring occupancy-rights at a rate ordinarily settled by law, but in special cases after the rents have been adjusted through the Courts, so that the landlord shall not suffer. I should be unwilling to part with this principle, and must oppose the amendment."

His Excellency THE PRESIDENT said:—"I most strongly object to the substitution proposed by my hon'ble friend. When he speaks of section 62 as an encroachment on the rights of landlords, it is necessary that we should consider what are the rights of landlords at the present moment in the Central Provinces. We are not talking of the abstract rights of landlords. That subject is a very large one. What we have to deal with are the rights of landlords in the Central Provinces now, and those rights are subject to the provision of Act X of 1859, which confers on the tenant the power of obtaining occupancy-rights if he occupies the same land for a period of twelve years, therefore, the rights of landlords in the Central Provinces at present are limited by the rights of tenants to acquire, by a certain process, an occupancy-right in their lands. The framers of the Bill in its present shape were led to believe that it would be desirable to put an end to the existing mode of obtaining occupancy-rights by the tenants, in consequence of the serious objections which may be urged against any system under which a tenant acquires occupancy-rights by a mere lapse of time. It seemed, therefore, desirable that to get rid of that system in the Central Provinces before it had produced there those evils and those difficulties in the relations of landlord and tenant which have been found to spring from it in other parts of India. The question, then, the Committee had to consider was, what substitute they should give to tenants for this power of obtaining rights of occupancy by the lapse of time. My hon'ble friend Mr. Barkley says that Bill No. I as introduced by Mr. Grant did not contain this proposal. Doubtless not, but it did not propose to abolish the twelve-years' rule. Bill No. I retained the twelve-years' rule and gave tenants that mode of acquiring rights which the present Bill seeks to supersede. It appears to me that one of the great advantages of the present proposal over to twelve-years' rule is that, whereas, practically speaking, the twelve-years' rule

gives occupancy-rights to tenants by accident, this proposal, on the contrary gives the power of obtaining such rights to thrift and to frugality. Under the twelve-years' rule, it depends on an accident whether a landlord gives a tenant notice to quit before the expiration of twelve years, and thus takes the measures necessary to prevent the accrual of the right; on the other hand, it is the thrifty tenants who will under the new proposal be able to purchase an occupancy-right. The right will depend not upon accident, not upon whether the landlord will allow the tenant to remain in possession for twelve years, but upon whether by frugality he is able to lay by sufficient to enable him to purchase an occupancy-right in the manner proposed by section 62. Now, my hon'ble friend Mr. Barkley says there is not much evidence to show that this proposal has been accepted by those best acquainted with the Central Provinces. I may say that, in the first place, it has been accepted by Sir J. H. Morris, than whom no one is better acquainted with the circumstances and requirement of these Provinces. It has also been most carefully and closely considered by my hon'ble friend Mr. Crosthwaite, who had charge of the Bill originally. I have discussed it with him several times, and it is most unfortunate that we have not his presence here to-day. I felt bound to call him to higher functions during the absence of Mr. Bernard, but, had he been present here, he would have given us the weight of his great experience in the Central Provinces to meet the objections taken by Mr. Barkley. I must also point out that, if we were to adopt the amendment proposed by Mr. Barkley in this matter, we should actually put the raiyats in the Central Provinces in a worse position than they are now in. We should have abolished their power of acquiring the right of occupancy under the twelve-years' rule, and substituted for it nothing but a legal power to the landlord to sell them this right if he chose to do so. It is quite impossible that the Council can accept a proposal of that kind. For a considerable time this clause may be made little use of, but it will enable those tenants who have laid by a small amount of capital to acquire the greater security which occupancy-rights afford, and without the result of the Bill would be to shut the door to all hope of raiyats ever acquiring that security at all.

"Under these circumstances, I cannot give my vote in favour of the amendment proposed by my hon'ble friend Mr. Barkley."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that in section 71, clause (*a*), for the words "one hundred," the word "twenty" be substituted. He said:—

"This amendent raises no question of principle, but merely one of expediency. A similar provision is to be found in the Rent Act in force in the North-Western Provinces, but I think it necessary to point out that, in cases

where rent is paid in the form of a share in the produce or of the estimated value of such a share, suits for arrears of rent usually involve questions of much difficulty, such as the actual amount of the yield, the value of the landlord's share, and the reason why that share was not taken when the crop was reaped,—the tenant perhaps alleging that the landlord would not accept it, because the yield was so small that he hoped to get more by suing, while the landlord asserts that the tenant removed the whole crop before any division of the produce could be made. The decisions of Assistant Commissioners of the first class in the simplest cases are at present subject to appeal, and neither landlords nor tenants appear to have such confidence in the courts of these officers as to make them willing to be deprived of the power of appeal in cases relating to arrears of rent. The tenants in the Harda tahsil ask that appeals may be allowed or that the limit of exclusion may be reduced to Rs. 10 (Paper No. 15), and the landlords of Raipur are willing that there should be no appeal from the Deputy Commissioner's decision in cases of this nature,—which that officer is not likely often to try,—but ask for an appeal from the decision of the Assistant Commissioner (Paper No. 28). I have taken Rs. 20 as the limit, as, in claims under that amount, it can rarely be worth the while of either party to appeal where no question of title or interest in land is involved. But I think we should avoid doing anything which would give colour to the supposition that we regard the right decision of cases where the amount of rent payable is in question as of less importance than the right decision of cases relating to small debts."

The Hon'ble SIR STEUART BAYLEY said:—"My Lord, I cannot concur in this. Against the limitation which prevails in the Panjáb, the Bill has adopted that which has been found to work well in Bengal under section 153 of Act X of 1859 and section 102 of the present Act, in the North-Western Provinces under section 80 of Act XII of 1881, and in Oudh under section 95 of the Oudh Tenancy Act. Assuredly, the tendency of recent legislation has not been to increase the facilities for appealing. I should prefer, therefore, to maintain the limit of 100 rupees."

The Motion was put and negatived.

The Hon'ble MR. ILBERT moved that the Bill as amended be passed.

The Hon'ble MR. QUINTON said:—"My Lord, I cannot refuse to support this Bill, which is the result of long and careful deliberation on the part of this Council and of the local authorities, and which offers a hopeful prospect of placing on a satisfactory footing for some time to come the relations between landlords and tenants in the Central Provinces. I am, however, reluctant to give a silent vote in favour of it, lest my acceptance of the measure should lead to the conclusion that I consider it a precedent to be invariably followed in other cases for which we may hereafter have to legislate.

"The speech of my hon'ble and learned friend Mr. Ilbert has shown very clearly why the Bill now before us differs so materially from that which the Government of India, with the consent of Her Majesty's Government at home, have thought fit to propose for the Lower Provinces of Bengal; and I would, even at the risk of some repetition, call the attention of the Council to a few circumstances in which the Central Provinces differ from that part of Upper India of which I have most personal knowledge, namely, the North-Western Provinces and Oudh, with the object of deprecating the inference that, in any future legislation for the latter, this Bill should, of necessity, be taken as a guide. Numerous provisions of the Bill are of a novel character; several of them, such as the stoppage of the growth of occupancy-rights by prescription, the modes of enhancing the rents of occupancy-tenants and the different methods adopted for the protection of tenants without rights of occupancy from rack-renting and capricious eviction, are of a most important nature, and have been determined on with the advice of those best able to judge of the local peculiarities of the Central Provinces; but it by no means follows that such provisions would be found adequate or could be successfully applied under conditions essentially different.

"In the Central Provinces, culturable waste land is abundant, and is available in the shape most favourable to a wide extension of cultivation; that is, in large blocks for the use of new settlers. There is no district or part of a district in which there is an early prospect of the limits of cultivation being reached. In the North-Western Provinces and Oudh, on the other hand, there is left but a small margin of land easily culturable, much of that which is so recorded being portions of villages impregnated with salts pernicious to vegetation, and incapable of being rendered culturable by any experiment that is likely to prove remunerative.

"In the Central Provinces, there is a sparse population, the density of which is about one-fourth of that of the North-Western Provinces and Oudh, where, especially in the Eastern districts, the pressure of population on the culturable area is becoming extreme.

"In the former favoured regions, Act X of 1859 was introduced at a later period, and landlords have not been driven, and have not generally attempted, to work that enactment to the prejudice of the tenants; but in the North-Western Provinces and Oudh, the acquisition of occupancy-rights under the twelve-years' rule has been recognised since before the mutiny, and, together with its correlative right of barring such acquisition by ejecting the tenant before the expiration of the prescribed period received legal confirmation in 1859 by Act X of that year. These mutual rights of landlord and tenant are universally known and widely exercised, while

the powers of enhancement conferred on the landlord, which have remained in the Central Provinces almost a dead-letter, have been very generally enforced, in many cases to the uttermost farthing.

"In fact, in the one case, abundance of waste land and a sparse population effectually protected the tenants from rack-renting and capricious eviction; in the other, a denser population, which has almost reached the utmost limits of cultivation, tended to compel both parties to insist on every jot and tittle of their legal rights. I think, therefore, I am justified in asserting that there are essential differences in the economic conditions and mutual relations of the agricultural classes in the two Provinces.

"The discussion of the relative rights of landlords and tenants, and the due adjustment of these with reference to the good of the whole community, are not now subjects confined to a single province or even to British India. They have long been burning questions in Ireland, and the settlement of them has taxed to the utmost the wisdom of Parliament. They are coming rapidly to the front in England and Scotland, and indications are not wanting that even in the United States of America we are within measurable distance of a time when the operation of the land laws there in force will be subjected to rude criticism, and possibly to revision. In India, a tenancy Bill for Bengal is pending before this Council, proposals have been made and enquiries instituted having in view the amendment of the Rent Laws of the North-Western Provinces and Oudh and of the Panjáb, and even in British Burma the subject is attracting attention. It is impossible to suppose that in all these countries the same remedies will be found equally applicable. There can be no doubt that widely different modes of treatment must be adopted in different cases, and that each case must be dealt with on its own merits.

"Without, therefore, expressing any opinion as to the lines on which legislation for landlords and tenants in other provinces should proceed, which would be for me alike improper and inexpedient, I would on this occasion merely insist on the fact that the existence of differences such as I have attempted to describe, between the North-Western Provinces and Oudh on the one hand and Central Provinces on the other, is sufficient to refute the reasoning that, by passing the Bill now under discussion, we tie our hands from legislating in the future for the North-Western Provinces and Oudh in any direction that, after due deliberation, may appear most suitable."

The Hon'ble MR. HUNTER said:—"My Lord, I desire to say a few words in regard to the third class of tenants dealt with by this Bill. The two superior classes possessing occupancy-rights have, since the Provinces passed under British rule, enjoyed the fostering care of the Government. Their status is founded on ancient custom, it has been confirmed by the settlement-records,

and it will henceforth rest on the firm legislative basis provided by this Act. The position of the third class of cultivators, the tenants-at-will, is very different. They have no prescriptive privileges to plead, nor any settlement-papers to appeal to, and their whole future depends on the legal status now accorded to them. And not their future alone, but also in an important, although in a less direct manner, the future of the corresponding class of cultivators in the crowded districts of the North-Western Provinces and Bengal. For the population in some of those districts now presses so heavily on the land, that large numbers must either submit to suffering, at times bordering on starvation, in their native villages; or they must go forth in quest of new homes. Such movements of the people have already begun, not only under the spasmodic compulsion of famines, but also under the steady constraint of over-population. The sparsely inhabited tracts on the east and south of the Gangetic valley have from ancient times formed, and still form, the natural receptacles of this peasant outflow. Those tracts are now, for practical purposes, Assam and the Central Provinces. While population in some of the densely thronged districts of the Ganges has reached the stationary stage, the inhabitants in Assam increased by three-quarters of a million or over 18 per cent. in the nine years between the Census of 1872 and that of 1881. During the same period the inhabitants of the Central Provinces increased by 2⅓ millions, or over 25 per cent. How far the increase is due to immigration, and to the children born of immigrants, it is not yet possible to state with precision. The quality of the unoccupied soil varies from unhealthy hill tracts in the Central Provinces to the great grass plains of the Brahmaputra, which according to the Chief Commissioner, require only a sickle and a lucifer match to turn them into arable fields. Taken as a whole, the cultivable lands still unoccupied in Assam and the Central Provinces, deducting Government forests and the area within great private estates, exceed 17 millions of acres; or more than the whole area in Great Britain and Ireland under corn corps, green corps, grass and all other crops in 1879, excluding, of course, permanent pasture.

"These vast reserves of land are a trust which the State holds, not only for the growing inhabitants of the territories within which they lie, but also for the over-crowded population of the Provinces adjacent to them. In three districts of the Central Provinces, from 13 to 15 per cent. of the people are immigrants, and, if we add the children born to them, the proportion would be much higher. The majority of such new-comers cultivate the soil as tenants-at-will. When the land-settlement was made, most of the old tenants received occupancy or proprietary rights; and almost all the rest of them have since acquired occupancy-rights under the twelve years' rule. 'The residuum,' to quote the words of our late colleague, Mr. Charles Crosthwaite, when "in

charge of the Bill, 'consists chiefly of new men—to a large extent of men who have taken waste or abandoned lands since the settlement.' The number of these 'new men' has not been placed before the Council, and they seem to be dismissed as a less important class than the occupancy-tenants. But I find that the holdings of tenants-at-will have increased from under half-a-million to over 1½ millions between 1872 and 1882 in the Central Provinces, and that they now exceed all the holdings of the two superior classes of tenants put together. Instead of being an insignificant residuum they have become the most important class of tenants, both numerically and for the purposes of this Act, as their whole status will depend on the rights accorded to them by this Act. They are also the most important class in regard to the future development of the Central Provinces. For it is these 'new men,' as Mr. Crosthwaite calls them, who will chiefly extend cultivation, raise rents and increase the revenue. A paper before the Council shows that they already cultivate nearly one-half of the whole land returned as tenants' holdings in the Central Provinces.

"What provision does the Act make for the well-being of this useful and important class of 'new men'? In parts of Bengal the tenants-at-will are so over crowded, that a Bill now before the Council provides for increasing the protection accorded to them, at the cost of curtailing rights hitherto enjoyed by the landlords. The economic necessities of the case justify such increased protection. But I think that the Bengal landholders may reasonably ask that Government, before curtailing their privileges, shall do everything in its power to meet those economic necessities by throwing open the land to new comers in adjacent territories like the Central Provinces, where the State still retains a large measure of the proprietary right. By facilitating communication by road and railway, the Government has done much; and the projected line from Lower Bengal into the heart of the Central Provinces will still further aid the distribution of the people. But the question still remains whether the Land Law offers sufficient inducements to new comers to settle in those Provinces, and secures to them an adequate protection in the fields which they cultivate, and which, in many cases, they have reclaimed.

"The present Bill, together with the papers before the Council, offers to this question an answer, in some respects satisfactory, but in other respects, I fear, the reverse. The new settler and the tenant-at-will at once enter, under the provisions of the Act, on certain clearly defined rights. In the first place, the new comer, or tenant-at-will, gets his land at the low rate of 13$\frac{1}{6}$ annas per acre. Indeed, the superabundance of land is still so great in the Central Provinces, that, as far as the rates show, the tenants-at-will practically pay as low a rent as the conditional occupancy and absolute occu-

pancy-tenants, whose average rate is 12½ annas per acre. The old occupancy-tenants, however, usually hold the most favourably situated fields. Once settled on a holding, the new comer or tenant-at-will immediately acquires the five following rights under this Act. First, he must pay the rent agreed between himself and his landlord, but it requires a process at law for the landlord to eject him, or to raise the rent except with the tenant's consent. Second, if the tenant agrees to pay the enhanced rent demanded by the process of law, he is exempt from any further enhancement by judicial process for seven years. Third, if he declines to pay the enhanced rent and gives up his holding, he is entitled to compensation for improvements, and to a compensation for disturbance equal to seven times the enhancement demanded on the rent. Fourth, subject to the above, his right to continue on his holding becomes, from the moment he enters on it, hereditary in his family, although not passing to collaterals. Finally, he has a right to purchase the status of an occupancy-tenant by the payment of 2½ times the annual rent. As regards, therefore, the immediate rights of the new comer and the tenant-at-will, this Act makes a most liberal provision. It may fairly claim to have done away with tenants-at-will altogether, and to have raised them, in fact as well as in name, into the new class which it terms 'ordinary tenants.'

"But if we look beyond the immediate rights conferred to the future status created by the Bill for new comers and ordinary tenants, the prospect is not so satisfactory. Such tenants enter at once upon all the privileges which they will ever acquire under the Act, and the element of the growth of rights is altogether absent. But the superabundance of land affords an ample protection to such tenants in the meanwhile, apart from any legislative enactment; and the Bill makes no adequate provision for the time when the superabundance of land will have disappeared. So long as the economic relation of land and labour suffices to protect the new comer and the ordinary tenant, they have no need to resort to the Bill. When the present exceptional relations of land and labour in the Central Provinces shall have given place to competitive rents, the ordinary tenants will resort to the Bill in vain. For this Bill abolishes the chief safeguard which the ordinary tenant has enjoyed from time immemorial, not only in the Central Provinces, but in almost every part of India, namely, the growth of a right of occupancy accruing from the continued cultivation of the land.

"I am aware, my Lord, that, in raising the point which I now desire to bring before the Council, I may be charged with inconsistency. The Select Committee on this Bill has already presented several reports approving of the measure, and of that Select Committee I have the honour to be a member. The first report of the Committee suggested the abolition of the twelve-years,

rule which conferred the right of occupancy, and I signed the report. But in that report we distinctly said that the majority of the Committee desired to reserve its opinion as to the expediency of the amendments proposed. I was absent on tour as President of the Education Commission when the Committee came to the consideration of those amendments, and presented its second report, dated the 6th September, 1882, approving of the proposal with regard to occupancy-rights. That report I did not sign, and, at the first meeting of the Committee which I subsequently attended, I brought the question of the twelve-years' rule before the members. I ascertained that the subject had been fully considered; and it would have been unsuitable to again raise a question upon which the Select Committee had made up its mind. I now desire to state, while acknowledging the many admirable provisions of the Bill, and while giving my support to the measure as a whole, the reasons which lead me to regret this particular feature of it.

"Until to-day, one-half of the tenants' holdings in the Central Provinces have been held by men who were in the process of acquiring occupancy-rights under the twelve-years' rule. After the passing of this Bill, those men will lose all further chance of acquiring such rights. The arguments which have led to this sudden change seem to me inadequate; and the privileges which the Bill substitutes for the growth of occupancy-rights seem to me insufficient. The arguments for putting an end to the growth of those rights, as disclosed by the papers before the Council, are two-fold. First, that the landholders of the Central Provinces, in order to prevent these rights accruing, harass their tenants by frequently shifting their holdings. Second, that a large amount of litigation is thereby involved, injuries alike to the landlord and the tenant. The result is, as summed up in the speech of the hon'ble the Legal Member this morning, to render the position of the ordinary tenant one of great insecurity. But the first of these two arguments is stated by Mr. Jones, now Chief Commissioner of the Central Provinces, to be 'demonstrably unsound.' Mr. Jones points out in his letter, dated 18th September, 1880, that the protection clauses (in the Bill as it formerly stood) do not require that a tenant should cultivate the same land. Under such protection clauses, the tenants' claim to occupancy-rights by twelve years' continuous cultivation may run—and it is proposed in Bengal that it shall run—so long as the tenant holds lands in the same village or estate. I am aware that Mr. Jones has since accepted the Bill as a whole, but, as far as I have seen, he has not altered his opinion on this point. The demand for tenants is so great in the Central Provinces, and the present difference between the rate of rent paid by the ordinary tenant and the occupancy-tenant is so small, that, although a landlord might try to break the twelve years' continuous occupancy by shifting the holdings of his tenants upon his own estate, in very few cases would he drive a tenant off his property with a view to preventing the

growth of occupancy-rights. Nor is combination between neighbouring landlords for that purpose possible on any considerable scale, in the present relation of land to labour in the Central Provinces. As a matter of fact, Mr. Crosthwaite admits that the twelve-years' rule has operated freely in those Provinces, and 'that the great mass of the tenants who were in existence at the settlement have acquired rights under the twelve years' rule.' In support of the second argument, namely, excessive litigation, Mr. Crosthwaite, in his able memorandum of the 20th February, 1883, quotes the statistics of applications made to the Courts to eject tenants, and lays special stress on the increasing number of these applications during the past four years. I find that the average during the four years amounted to 2,839 applications, and that the number during 1880-81, the last year cited, was 2,780. Taking the highest of these figures and calculating it upon the 1,556,823 holdings by tenants-at-will in the Central Provinces, I find that the applications to eject averaged only one a year to 548 holdings by tenants-at-will. I do not think that this can be called excessive litigation. A large proportion of these tenants-at-will have acquired occupancy-rights or are approaching the acquisition of them. The obvious and simple way to test their occupancy-rights is by means of an application for ejectment, and I think that one such suit to every 548 holdings is a very cheap price to pay for the assertion of their rights. I am aware that in certain districts the average was higher. But in those districts the competition for land had become more severe, the value of occupancy-rights, if successfully maintained, had become greater to the tenant, and I think the increased litigation necessary to maintain those rights was a cheap price to pay for them. It is impossible to give land-rights without creating a necessity for asserting and defending those rights in the Courts of law. A third argument against the continuance of the twelve-years' rule was brought forward by the hon'ble the Legal Member in his speech this morning. If I caught the argument aright it amounts to this: The continuance of the twelve-years' rule would involve a settlement of rates, and a settlement of rates is a costly process to Government. But the general re-settlement of the Central Provinces is impending. In individual districts the period of the old settlement has expired, or will shortly run out. Until the re-settlement is effected in the ordinary course, the twelve-years' rule might continue to be carried out, as in Bengal, through the operation of the Court. I think, therefore that the arguments brought forward for the abolition of the twelve-years' rule conferring occupancy-rights, are inadequate.

"The privileges conferred by the Bill in lieu of the acquisition of occupancy rights by ordinary tenants seem to me equally insufficient. It is sometimes argued as if the twelve-years' rule was an arbitrary invention of Act X of 1859. As a matter of fact, the rule has existed in one form or another ever since

the British Government began to concern itself about the rights of the people. What Act X did was to select, from among the various terms of years which had been current in different parts of the country, the single term of twelve years, and to make it applicable to all Provinces to which the law was extended. This term coincided with the period of limitation in suits on account of immovable property, and it fairly applied to the older settled Provinces. But before any single term obtained the rigidity of law, there had been also other periods with the binding force of custom. More than sixty years ago Sir J. E. Colebrooke, in his Minute on Settlement, dated 12th July, 1820, proposed that an enactment should be passed 'declaring the resident-tenants to be not removable as long as they continue to pay the same rent which they have paid during the last five years.' Sir W Sleeman in 1840 applied the five-years' period of continuous occupation as a test of occupancy-rights to parts of the Central Provinces which were then under the British Government. Mr. Charles Grant, in his paper now before the Council, dated the 13th September, 1873, stated 'that this rule retained its place in popular acceptation as late as 1855, and it was acted upon in the settlement of some parts of the Central Provinces.' The five-years' rule in favour of the tenant was made harder by Act X of 1859, requiring twelve years of continuous occupation. The twelve years' rule in favour of the tenant is now to be altogether abolished in those Provinces, for reasons which, as I have shown, cannot be maintained. From this day the new-comers and ordinary tenants of the Central Provinces may bring the jungle under cultivation and reclaim the wastes, but their rights to the fruits of their labour will never increase (except by purchase) from the moment after they have entered on the land.

"I have admitted that the compensation given by the Bill to the tenants for taking way their growing rights of occupancy is liberal, if we look only to the immediate results. But the more successful that compensation may be as an inducement to immigration in the present, the harder will be the lot of the people in the future. For, with the influx of cultivators, rent will rise, and the whole advantages conferred by this Bill seem to me to depend upon the present low rate of rent due to under-population. The Bill leaves the ordinary tenant in all time coming to make such a bargain as he can with the landlord; which means in India submission to whatever terms the landlord may impose. Once the increase of population has taken place, the only practical check upon rack-renting will be the seven years' compensation for disturbance. The compensation for improvements will be inoperative, for the Bill gives the first right of making improvements not to the ordinary tenants but to the landlord. Nor does the Bill protect the ordinary tenant who clings to his land and submits to a rise of rent, from an enhancement arising out of the improvements which he himself has made. The provision for the purchase of occupancy-rights by

ordinary tenants will be little operative. Indeed, the framers of this provision admit that they do not expect it to be resorted to on any considerable scale. For, assuming, as the former draft of the Bill assumed, the maximum difference between occupancy and ordinary rates of rent to be 25 per cent., the sum which the ordinary tenant must pay for occupancy-rights would, at 12 per cent. interest per annum, exceed the maximum benefit in rent which he could gain by the transaction. It is doubtful whether the ordinary tenant could borrow at 12 per cent.

"The one real safeguard which the Bill gives is the compensation for disturbance equal to seven times the enhancement demanded. The Hon'ble Sir Steuart Bayley has told the Council this morning that, if the provision of compensation for disturbance fails, the ordinary tenant will be worse off than under the old state of things. Mr. Crosthwaite, when in charge of the Bill, admitted that compensation for disturbance was a new experiment in Indian legislation. I believe it is a new experiment in legislation in any country. The only precedent with which I am acquainted is the Irish Land Law. The experiment was first tried by the Irish Landlord and Tenant Act of 1870, and it did not succeed. The causes of its failure, so far as I have seen them stated, were due chiefly to the inadequacy and unsuitability of the scale. The Irish Land Law of 1881 has, therefore, amended and increased the scale. Whether even this higher scale will suffice to protect the tenant no man can yet say. But the higher scale found necessary to give compensation for disturbance a fair chance in Ireland is not seven times the enhancement claimed, but a sum not exceeding seven times the whole rent. This is applicable to rents of £30 or under, which would practically include all rents paid by ordinary tenants in the Central Provinces. That is to say, if an Irish tenant sitting at a rent of £10 refuses to agree to an enhancement of £1, and is ejected in consequence, his landlord has to pay him a sum not exceeding £70 as compensation for disturbance. The same man in the Central Provinces can receive as compensation only £7. I am aware that the competition for land is at present much less keen in the Central Provinces than in Ireland; but compensation for disturbance is intended to protect the tenant when the competition for land in the Central Provinces has grown more intense. The contrast is equally great if the tenant submits to the enhancement. In Ireland, he would receive a statutory lease for 15 years at a rent fixed by a Court of law. At the end of that period the rent could only be raised upon cause shown by the landlord to the Court, in which case the tenant would get a fresh statutory lease for another term of 15 years, and so on for ever. The tenant in the Central Provinces has to submit to an enhanced rent, not as impartially fixed by a Court, but as demanded by his landlord and enforced by process of law. He receives protection from a further arbitrary enhancement by the same process for only for seven years, and at

the end of the seven years he is entirely at the mercy of the landlord. This Bill substitutes for the old customary growth of occupancy-rights, which have existed from time immemorial in India, new legislative devices copied from the English law. But it deprives those devices of the stringency by which the English law renders them operative in favour of the tenant.

"I had hoped that the duty of stating these objections would have fallen to a member of the Council whose views would have carried the weight of greater experience than mine. My hon'ble friend Mr. Reynolds, one of the chief authorities in Bengal on questions of land-administration, signed the third report of the Select Committee with much hesitation, as he was not satisfied that the interests of the tenants were sufficiently protected. He has now written to me that he intended, if the Bill had come before the Council in Calcutta, to oppose it on grounds similar to those which I have taken up. If your Lordship will allow me, I should like to read the following sentences from his letter:—

'In regard to the tenants who have not yet acquired the rights of occupancy, and the tenants who may take land hereafter, the provisions of the Bill are disastrous. They are resident cultivators, and, whether they have held for twelve years or not, they are entitled under the common law of India to the status of occupancy-raiyats. But the Bill declares not only that they do not possess that status, but that they shall never acquire it. As to future tenants, the scheme is one of cottierism. Compensation for ejectment is quite a new experiment in India, and it may safely be said that it will be inefficacious. It is certain that the raiyat will submit to any exaction rather than surrender his holding. The Bill will reduce the great mass of the population to the condition of rack-rented tenants.'

"I do not go so far as my hon'ble friend either in regard to the common law of India, which has not yet been so accurately ascertained as in my opinion to permit of generalisations from it, or in regard to the disastrous consequences which he anticipates from this Bill. I believe that the Act as a whole will prove beneficial both in respect to the amended procedure which it lays down, and by the clearly defined status which it provides for the two superior classes of tenants. But I think that the abolition of the growth of occupancy-rights under the twelve-years' rule is particularly unfortunate at present. It is of the utmost importance that population should be induced to move into the unoccupied lands of the Central Provinces. I have shown that such a movement has already begun, and the Government is doing what it can to assist the movement by facilities of communication. But to tell the men who come in and clear the forest and bring the land under tillage that, while by their labours the landlord's rent shall rise and the Government revenue increase, they themselves shall never acquire occupancy-rights except by purchase, that, indeed, they shall never obtain a single further right in the soil than that which they possess on the

first day that they break up the land, seems equally opposed to Indian custom in the past and to economic expediency in the present. Before considering this aspect of the Bill, I examined the available evidence regarding the movements of the people. It is to such movements quite as much as to the legislation now impending in Bengal, that we must look for a permanent remedy for the poverty and over-population of the Gangetic provinces. The facts available are of a scanty character, as the census does not show the children born to immigrants. But they suffice to disclose the inexpediency of putting any check upon the acquisition of land-rights in sparsely-peopled tracts Since the census of 1872 a vast new population of cultivators has sprung up in the Central Provinces, all of whom have until to-day been acquiring occupancy-rights; but not one of whom will now be permitted to complete the acquisition of those rights, as the interval since the last census does not amount to twelve complete years. During the same period, more than a million of new holdings by tenants-at-will appear on the returns. How many individual tenants are represented by these holdings the statistics do not show. But every one of this million of new holdings will be now excluded from the customary growth of occupancy-rights. What Mr. Crosthwaite calls the 'residuum chiefly of new men,' at one time comparatively insignificant, but who now occupy nearly one-half of the whole area of tenants' holdings in the Central Provinces, and who will hereafter form the chief source of increase in the cultivation of those Provinces, are from to-day for ever debarred from acquiring occupancy-rights. I think it is much to be regretted that the movements of the people have never formed the subject of a comprehensive enquiry by the Government of India. I believe that the facts elicited by such an enquiry would have prevented this mistake in an Act which, in other respects, has been carefully considered, and which will prove beneficial to the people.

"I am aware that Your Lordship's Government had in this Bill to find a workable middle line between two extreme parties—between the partisans of the landlords and the tenants' friends. I acknowledge the fairness and the skill with which that line has been struck, excepting at one point—a point not of immediate urgency, although of great future importance. The increasing population in the Central Provinces is already making itself felt in two ways—by a rise of rent in some districts, and by a more intensive husbandry in others. The holdings of the two superior classes of tenants with occupancy-rights numbered just over a quarter of a million in 1872, with an average of 16 acres a-piece. They had increased to 1½ million in 1882, with an average of under five acres. The holdings of the tenants-at-will were under half a million in 1872, with an average of ten acres. They now exceed 1½ million, with an average of three acres. During the last ten years, therefore, the tenants' holdings in the Central Provinces have increased more than four-folds in numbers and have

decreased to one-fifth of their previous average area. The time when the tenants-at-will must require protection is, therefore, not in the distant future. But for the Act which we are now about to pass, that protection would have been given under the customary twelve-years' rule of continuous occupation, and it was given in the earlier draft of the Bill. I believe that the protection thus accorded would have been in strict consonance with the teaching of the past and with the wants of the future. It would have been accorded without any injury to private proprietary rights, for the Government has not yet permitted such rights to fully consolidate themselves in the Central Provinces. The proprietary body is there a comparatively recent creation of British rule, and still holds its land subject to conditions which the Government may make in favour of the tenants-at-will at the next settlement. In this respect the Government had an opportunity to provide for the future of the cultivators of the Central Provinces without infringing on proprietary rights—an opportunity which it has long since lost in Bengal, and which it will no longer enjoy even in the CentralProvinces when private proprietary rights have consolidated. The very increase of population which will render a greater degree of protection necessary for the tenants, will also render it more difficult for the legislature to grant such protection without injustice to the landlords. The recognition of the pre-existing twelve-years' rule of occupancy under the safeguards recommended by the present Chief Commissioner of the Central Provinces, and set forth in the earlier draft of this Bill, would have got rid of that difficulty once and for ever. The rights of the cultivators would have grown with a natural and customary growth, as the necessity for such rights augmented. The problem which might at present have been so simple to deal with in the Central Provinces, has become complicated by private proprietary rights in Bengal. I therefore, equally with my hon'ble friend Mr. Quinton, enter a *caveat* against the arguments which I have used in regard to the Central Provinces being transferred, except with great caution and with many reservations, to the proposed Rent Bill for Bengal. I regret to observe a disposition in some of the papers before the Council to minimise this Bill as one intended only for the present, to refrain from seeking a basis for the tenants-at-will in the history of the past, and from attempting to forecast their necessities in the future. It was, therefore, with particular pleasure that I listened to the exhaustive retrospect in the speech of the hon'ble the Legal Member to-day. For land-legislation, if it is to be fair, must be based on the history of the past, and, if it is to be safe, it must take into consideration the economic changes impending in the future. For the future will assuredly arrive and bring with it the consequences of the present. Those consequences, if unchecked in the Central Provinces, will in time produce a population of small tenants holding at competitive rents. I sincerely hope that those consequences will be checked, and I think the Government of India

may be safely trusted to devise the means. For the great measures of land-legislation, with which your Lordship's name for ever will be associated, are in reality measures for the protection of the peasant. This Bill gives ample security to the cultivator so long as the population continues sparse; and I hope that additional safeguards will be provided as the population increases."

His Excellency THE PRESIDENT said:—"I should like to make one or two observations on the remarks which have fallen from my hon'ble friend Mr. Hunter. I listened with feelings of regret to a great portion of that speech, because I felt it was a very powerful argument against the provisions of this Bill, and I began to fear that the Bill might be open to the objections which he was urging against it. But I confess I was somewhat comforted by the last sentence of his speech, in which he said that this Bill made ample provision for the right of the cultivators so long as the population was sparse. That, however, is really all that the Bill professes to do. Certainly it was all I thought that the Bill will do. It appears to me that, in dealing with this very difficult question of the relations between landlord and tenant, what we have to do is to treat it with reference to the varying conditions of different parts of India as they come before us when we undertake legislation. I feel strongly that legislation which might be wise for one province with a thin population might be altogether inadequate to provide proper securities for the cultivators of the soil in the more thickly populated districts of India.

"In preparing the Bill, the object of its framers has been to deal with the circumstances of the province at the present time. It is undesirable to interfere more than may be necessary in the relations between landlord and tenant, because such interference is always a delicate matter. I am not, however, one of those who object to interference of that kind when necessary, but I think it wise in undertaking such interference to pay careful regard to the agricultural arrangements of each district, and I am not at all inclined to attempt to force one uniform system upon all parts of the country.

"My friend Mr. Hunter spoke of the case of Ireland. He said that some of the proposals in this Bill were borrowed from Bills passed in respect of Ireland, and that they were even less extended in their scope than the proposals contained in the Irish Land Act of 1870, which have been proved to be inadequate. My answer to that objection is this. In Ireland you have a much more keen competition for land than at present exists in the Central Provinces. What may be inadequate in Ireland may not be inadequate in the present circumstances of the Central Provinces. It is very possible that this measure may not afford sufficient protection for the rights of ordinary tenants in the Central Provinces if their circumstances should change. But if they do change, it will be

the duty of the Government of India to consider what legislative arrangements will be necessary to meet their altered condition. What we have endeavoured to do now is to provide for these circumstances as we find them, and to have recourse to the minimum of interference in the arrangements between landlord and tenant, which appear to us to be sufficient to give the cultivators of the soil in those Provinces due protection against exorbitant enhancement of rent and arbitrary eviction. It is my hope that this measure will be effectual for that purpose; but this remains to be seen. Ten or twenty years hence it is possible that these arrangements may be found inadequate, and, should that be the case, it will be for the Government of that day to apply a remedy.

"I confess, with respect to the twelve-years' rule, that I cannot speak of it with the amount of satisfaction with which it has been spoken of by my hon'ble friend Mr. Hunter. I share strongly the opinion expressed in an able paper on the Bengal rent question by my friend Mr. Justice Cunningham, who brings forward there, very clearly and plainly, the objections which lie against any system which makes the acquirement of occupancy-rights dependent on the afflux of a fixed and determined period of time. All the evidence goes to show that that system is open to objection, and it is very undesirable that it should be allowed to grow up. My hon'ble friend Mr. Hunter argues that the evils resulting from it have not yet sprung up in the Central Provinces; but there is evidence to show that they are already appearing there as the population increases; and it seems to me that it was advisable to put a stop to them now, rather than to wait till we have to encounter hereafter those difficulties which now meet us in Bengal. I yield to no man in the desire to protect the just rights of tenants, and I hope and believe that this Bill will operate to strengthen the position of the cultivating tenants of the Central Provinces. The Bill is not intended, as has been justly remarked by the Hon'ble Mr. Quinton, as a precedent to be followed in other provinces the condition of which is very different, but it is a measure applicable to the circumstances of the day in the Central Provinces; and, if hereafter it should require amendment, I have no doubt that the Government of India will know how to deal with any fresh circumstances which may arise."

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Native Passenger Ships Act, 1876. He said that the object of the Bill was to amend the Native Passenger Ships Act, VIII of 1876, with a view to provide for the better regulation of the pilgrim-traffic between British India and Arabia. This traffic had formed the subject of correspondence between the Secretary of

State, the Government of India and the various Local maritime Governments in India. A careful consideration had brought the Government to the conclusion that the importance of the pilgrim-traffic made its detailed regulation imperative and that, to secure uniformity of procedure, and thereby avoid the friction which must inevitably follow divergence between rules separately framed by different States, it was desirable that on all the more important points a common understanding should be come to among the Governments who were chiefly interested in the proper management of that traffic. The establishment of a practical coincidence between the general provisions of the local Turkish regulations and those of the law of India could only be effected by diplomatic correspondence between the British and Turkish Governments. But, since experience had shown that the provisions of the Indian law as it at present stood were insufficient to meet the peculiar exigencies of this traffic, and that in some respects they required revision, it seemed desirable, before attempting to bring about an assimilation of the British and Turkish laws, to make such amendments of our own law as were necessary to put it in a satisfactory state.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

RANGOON STREET TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to authorize the making, and to regulate the working, of Street Tramways in Rangoon. He said that the Municipal Committee of Rangoon had entered into an agreement with Mr. J W. Darwood by which they conferred upon him the exclusive right to construct and work public tramways within the limits of the municipality. The sanction of the Chief Commissioner had been obtained, but legislation was necessary both for the purpose of giving the requisite powers for interference with the streets and for the purpose of regulating the use of the tramways.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Cattle-trespass Act, 1871. He said that, by the Central Provinces Local Self-government Act passed at the beginning of this year, provision was made for transferring to the local authorities constituted under that Act some of the functions which, under the law as laid down in the Cattle-trespass Act, must be performed by the Magistrate of the district or the local officers, and also for crediting the surplus sale-proceeds of impounded cattle to the local fund. Provisions for the same purpose had been introduced both into the Bill which had been introduced at the Legislative Council of the Lieutenant-Governor of Bengal for amending the system of local self-government in that province, and also into the Bills now pending before this Council for local self-government in the Panjáb and the North-Western Provinces. There was no difficulty about these provisions so far as they were contained in the latter Bills, but doubts had been entertained whether, inasmuch as these provisions amounted to an amendment of the Cattle-trespass Act, their enactment would not be beyond the competency of a local legislature such as that of Bengal. Under these circumstances, the best course to adopt would be to make the Act more elastic by enabling Local Governments to make the requisite changes by executive order.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Stalement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette* and the *Calcutta Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PROTECTION OF INVENTIONS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill for the protection of inventions exhibited in the Exhibitions of India. He said that this Bill had been prepared in view of the forthcoming Exhibition to be held at Calcutta next cold season. It had been brought to the notice of Government that the want of some such protection might probably deter inventors of important inventions from sending them, and thus prevent the exhibition of some interesting exhibits. The effect of the Bill, if it became law, would be that, if an inventor exhibiting his invention applied, within six months from the opening of the Exhibition, for leave to file a specification, the circumstance of the invention having been publicly used after the opening of the Exhibition would not affect his rights. The Bill was based on an English Statute which had been passed for a similar purpose, and the differences between the present Bill and the English Act were mainly to be explained by reference to the differences between the English and Indian Patent Acts.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. QUINTON moved that the Hon'ble Mr. Barkley be added to the Select Committees on the following Bills:—

Bill to provide for the constitution of Local Boards in the North-Western Provinces and Oudh.

Bill to make better provision for the Organization and Administration of Municipalities in the North-Western Provinces and Oudh.

The Motion was put and agreed to.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble MR. QUINTON be added to the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 27th June, 1883.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 6th July, 1883.